

**Central Administrative Tribunal
Principal Bench, New Delhi**



**O.A. No.1022/2020
M.A. No. 1766/2020**

Order reserved on : 05.02.2021
Order pronounced on : 19.03.2021

(Through Video Conferencing)

Hon'ble Mr. Pradeep Kumar, Member (A)

1. Late Sh. B.H.Ahuja, Architect, aged 73, (retired Architect, Ministry of Industry, Director General of Health Services) Through L.R.'s Wife, Smt. Usha Ahuja, resident of Block No.C-4-E, Flat No.173, Janakpuri, New Delhi-110058.
... Applicant

(By Advocate: Sh. Ranvir Singh)

Versus

1. Union of India, through The Secretary, Ministry of Finance, Department of Expenditure, South Block, New Delhi-110001.
2. The Secretary, Ministry of Personnel, P.G. & Pensions, 3rd Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110003.
3. The Secretary, Ministry of Industry, Director General of Health Services, Architectural Wing, Nirman Bhavan, New Delhi-110001.

... Respondents

(By Advocate: Sh. Vijender Singh)



ORDER

One Sh. B.H.Ahuja joined as Draftsmen on 07.05.1964 and in due course was promoted as Architect and superannuated after 38 years of service on 30.09.2002 in the pay scale of Rs.10,000-15,200 under 5th Central Pay Commission (CPC). His basic salary at the time of superannuation was Rs.13,575/- p.m. Pension was accordingly fixed at Rs.6,772/- p.m. He is unfortunately no more. The present OA has been filed by his wife in her capacity as legal representative.

The grievance ventilated in this OA relates to fixation of pension as per 6th CPC for the period from 01.01.2006 to 31.12.2015, which in turn affects the family pension being paid to the applicant widow for said period. No grievance has been raised in respect of pension revision under 7th CPC which came into effect from 01.01.2016.

2. Once the 6th CPC recommendations were accepted by the Government, notification was issued on 29.08.2008. Thereafter, the pay fixation orders were issued on 30.08.2008 even though it came into effect from 01.01.2006. Concordance tables for fixation of pay were also issued. The pay scale corresponding to the applicant's last pay scale was PB-3 + GP Rs.6600 (Rs.15,600-39,100 + GP Rs.6600).



The basic pay for those in service as on 01.01.2006, corresponding to the applicant's basic pay of Rs.13,575/- is shown as Rs.25,250 + GP Rs.6600, i.e., Rs.31,850/- as per the concordance table.

3. In respect of those, who had already superannuated/retired as on 31.12.2005, the pension revision order was separately issued on 01.09.2008. The relevant paras are reproduced as under:

"Sub: Implementation of Government's decision on the recommendations of the Sixth Central Pay Commission – Revision of pension of pre-2006 pensioners/family pensioners etc.

1. *The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, sanction of the President is hereby accorded to the regulation, with effect from 1.1.2006, of pension/ family pension of all the pre-2006 pensioners/ family pensioners in the manner indicated in the succeeding paragraphs. Separate orders will be issued in respect of employees who retired/died on or after 1.1.2006.*

2.1 *These orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) Rules, 1972, CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973.*

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3.1 *In these orders :*

- a. *Existing pensioner or Existing Family pensioner means a pensioner who was drawing/entitled to pension/family pension on 31.12.2005.*
- b. *Existing pension means the basic pension inclusive of commuted portion, if any, due on 31.12.2005. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary*



Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

c. *Existing family pension means the basic family pension drawn on 31.12.2005 under the CCS (Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.*

4.1 *The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-*

i. *The existing pension/family pension.*

ii. *Dearness Pension, where applicable*

iii. *Dearness Relief upto AICPI (IW) average index 536 (Base year 1982= 100) i.e. @ 24% of Basic Pension/Basic family pension plus dearness pension as admissible vide this Department's O.M. No. 42/2/2006-P&PW(G) dated 5.4.2006*

iv. *Fitment weightage @ 40% of the existing pension/family pension.*

Where the existing pension in (i) above includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006.

4.2 *The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.*

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4. Certain clarifications for pensioners were also issued on 03.10.2008 wherein para 4.2 of letter dated 01.09.2008 (para 3 supra) was modified as under:



Provision in the OM No. 38/37/08-P&PW (A) dated 1.9.2008 (Para 3 supra)	Clarification/Modification issued on 03.10.2008
<p>4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired.</p>	<p>The pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs. 18400-22400, the corresponding pay band being Rs. 37400-67000 and the corresponding grade pay being Rs. 10,000/- p.m., his minimum guaranteed pension would be 50% of Rs. 37,400+Rs. 10,000 (i.e. Rs. 23,700). A statement indicating the minimum pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure.</p> <p>The pension will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs. 3500/- p.m.</p> <p>In case the pension consolidated as per para 4.1 of OM.No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the pension calculated in the manner indicated above, the same (higher consolidated pension) will be treated as Basic Pension.</p> <p>The fixation of family pension will be subject to the provision that the revised family pension, in no case, shall be lower than thirty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the pensioner/deceased Government servant had last</p>



	<p>worked. In case the family pension consolidated as per para 4.1 of OM.No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the family pension calculated in the manner indicated above, the same (higher consolidated family pension) will be treated as Basic family Pension.</p>
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5. As per Annexure to OM dated 01.09.2008, the minimum pension for those retiring in the pay scale of applicant is shown as Rs.11,100/- [in pay scale of Rs.15,600-39,100 + GP Rs.6600, 50% of (Rs.15,600 + GP Rs.6600 = Rs.22,200/-)= Rs.11,100/-]. Correspondingly, the family pension is shown as Rs.6660/-.

6. In accordance with the pension revision order under 6th CPC, as brought out in para 3 & 4 above, applicant's pension was revised vide orders dated 01.10.2013 to Rs.15,305/- p.m. w.e.f. 01.01.2006.

It appears that there was no grievance with this revision at relevant point of time as no such grievance was raised earlier at that time, as no such reference has presently been brought out in the instant OA.

7. Subsequently, 7th CPC came into being w.e.f. 01.01.2016. The order for revision of pension was issued



vide OM dated 12.05.2017. The relevant instructions for revision of pension are reproduced as under:

“Sub:-Implementation of Government's decision on the recommendations of the Seventh Central Pay Commission — Revision of pension of pre- 2016 pensioners/family pensioners, etc.

The undersigned is directed to say that the 7th Central Pay Commission (7th CPC), in its Report, recommended two formulations for revision of pension of pre- 2016 pensioners. A Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 was issued by this Department indicating the decisions taken by the Government on the various recommendations of the 7th CPC on pensionary matters.

2. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued vide this Department's OM No. 38/37/2016-P&PW (A) (ii) dated 04.08.2016. It was provided in this O.M. that the revised pension/family pension w. e.f. 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at the time of implementation of the recommendations of the 6th CPC, by 2.57.

3. In accordance with the decision mentioned in this Department's Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 and OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016, the feasibility of the first option recommended by 7th CPC has been examined by a Committee headed by Secretary, Department of Pension & Pensioners' Welfare.

4. The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. While fixing 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. 50% of the notional pay as on 01.01.2016 shall be the revised pension and 30% of this notional pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to family pension at enhanced rate, the revised family pension shall



be 50% of the notional pay as on 01.01.2016 and shall be payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee.

5. It has also been decided that higher of the two Formulations i.e. the pension/family pension already revised in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 or the revised pension/family pension as worked out in accordance with para 4 above, shall be granted to pre 2016 central civil pensioners as revised pension/family pension w.e.f. 01.01.2016. In cases where pension/family pension being paid w.e.f. 1.1.2016 in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 happens to be more than pension/family pension as worked out in accordance with para 4 above, the pension/family pension already being paid shall be treated as revised pension/family pension w.e.f. 1.1.2016.

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16. A few examples of calculation of pension/family pension in the manner prescribed above are given in Annexure-I to this O.M.

17. No arrears on account of revision of Pension/Family pension on notional fixation of pay will be admissible for the period prior to 1.1.2016. The arrears on account of revision of pension/family pension in terms of these orders would be admissible with effect from 01.01.2016. For calculation of arrears becoming due on the revision of pension/ family pension on the basis of this O.M., the arrears of pension and the revised pension/family pension already paid on revision of pension/family pension in accordance with the instructions contained in this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 shall be adjusted.

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19. These orders shall apply to all pensioners/family pensioners who were drawing pension/family pension before 1.1.2016 under the Central Civil Services (Pension) Rules, 1972, and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973. A pensioner/family pensioner who became entitled to pension/family pension with effect from 01.01.2016 consequent on retirement/death of Government servant on 31.12.2015, would also be covered by these orders. Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

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8. Thereafter, further instructions were issued by DOP&PW vide OM dated 06.07.2017. Concordance tables were also issued to facilitate the notional pay fixation as of 01.01.2016 and for fixation of corresponding pension.

For the pay scale and basic pay of Rs.13,575/- drawn by the applicant at the time of superannuation, the notional basic pay fixation under 6th CPC as of 01.01.2006 was shown as Rs.31,850/- (Ref. Para 2 supra) and notional pay fixation under 7th CPC as of 01.01.2016 was shown as Rs.83,300/- p.m. The revised pension w.e.f. 01.01.2016 is accordingly shown as Rs.41,650/- p.m. (50% of Rs.83,300/-) and revised family pension is shown as Rs.24,990/- p.m. Pension pay order applicable w.e.f. 01.01.2016 was accordingly issued on 25.10.2017.

9. With the revision of pension as per 7th CPC as above (Ref. para 8 supra), the applicant is now aggrieved that the pension revision as per 6th CPC for the period 01.01.2006 to 31.12.2015 needs to be revised to 50% of Rs.31,850, i.e., Rs.15,925/- p.m. on actual basis instead of Rs.15,305/- p.m. as was actually given (Ref. Para 6 supra).

10. For redressal of this grievance, the applicant filed OA No.2921/2017 which was disposed of on 27.09.2018 with a direction to the respondents to examine the claim and pass a



speaking order. The applicant was not satisfied with these directions and preferred writ No.11611/2019 before Hon'ble High Court of Delhi.

Meanwhile, the respondents had also passed the speaking order dated 13.11.2018 in compliance to the directions dated 27.09.2018 by the Tribunal wherein the claim of applicant was rejected. This was submitted by respondents before Hon'ble High Court of Delhi and it was pleaded that the pension fixation order issued on 25.10.2017 (Ref. Para 8 supra) was correct and it was clarified that as per 7th CPC instructions (Ref. Para 7 supra) the pay is required to be notionally fixed for earlier CPC's to arrive at the pay fixation as per the 7th CPC and pension under 7th CPC is to be fixed accordingly thereafter. These instructions also specify that fixation under earlier CPC is to be on notional basis only. It was accordingly brought out that the 6th CPC notional pay fixation for applicant works to Rs.31,850/-.

While issuing the speaking order dated 13.11.2018 certain typographical error had crept in and it was submitted before the Hon'ble High Court that the notional pay of Rs.31,850/- is actually w.e.f. 01.01.2006 and not w.e.f. 01.01.2016 as was erroneously shown in the speaking order dated 13.11.2018.

This was noted by the Hon'ble High Court and the writ was disposed of on 10.01.2020. This order reads as under:



“Mr. Kirtiman Singh, learned counsel for respondents submits that apprehension of the petitioner is unfounded and the notional pension of the deceased shall be fixed from 01.01.2006 and not from 01.01.2016 as mentioned in the table which is a typographical error. Respondents are bound by the statement made by their counsel.

Application is accordingly disposed of.”

Since the applicant’s plea of pension fixation at Rs.15,925/- for the period from 01.01.2006 to 31.12.2015, in place of Rs.15,305/-, on actual basis, has not been agreed to, the instant OA has been preferred. Following reliefs have been sought:

“A. Quash F.No. 38012/04/2002-Admin.I dated 13.11.2018; Annexure A-1;

B. Quash letter No. PAO/DGHS/PN/1108/1322 dated 1.10.2013 in fixing applicant’s basic pension at Rs.15,305/- per month;

C. Direct respondents to fix applicants pension at Rs.15,925/- p.m. w.e.f. 1.1.2006, in terms of Ministry of Finance, Department of Expenditure F.No.1/1/2008-IC dated 30th August 2008;”

11. The applicant relies upon the judgment dated 01.11.2011 by Tribunal in OA No.655/2010 wherein OM dated 03.10.2008 (para 4 supra) was quashed in so far as it created two classes of pensioners (pre-01.01.2006 and post-01.01.2006), and it was directed that the pension be fixed in terms of 6th CPC notification dated 29.08.2008.

It is also submitted that this decision by the Tribunal was challenged before Hon’ble High Court of Delhi in writ petition No.1535/2012. While this writ was being adjudicated, an OM was issued on 28.01.2013 to step up the



pension of pre-01.01.2006 retirees w.e.f. 24.09.2012, which is the date when 6th CPC recommendations were approved by the Government. This was taken into account by the Hon'ble High Court and the writ along with other writ petitions No.2348, 2349 & 2350, all of 2012, were dismissed by a common order dated 29.04.2013.

This was further agitated by the Government before Hon'ble Apex Court in SLP No.23055, 36148, 36149 & 36150, all of 2013. These SLPs were dismissed on 17.03.2015.

Thereafter, in compliance, an OM was issued on 30.07.2015 for revision of pension w.e.f. 01.01.2006 in terms of OM dated 30.08.2008.

11.1 In this context, it is also pleaded that pay fixation of those in service as of 01.01.2006 and pension fixation of pre-01.01.2006 retirees for the period 01.01.2006 to 31.12.2015, is needed to be done in an identical manner. It is pleaded that para 2 of OM dated 28.01.2013 (Ref. Para 11 supra) is not correctly implemented till date in regard to this stepping up. This para 2 of OM dated 28.01.2013 reads as under:

“2. It has been decided that the pension of pre-2006 pensioners as revised w.e.f. 1.1.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 1.9.2008, as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM



No.1/1/2008-IC dated 30th August, 2008. In the case of HAG and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above-referred OM dated 30.8.2008 of Ministry of Finance, Department of Expenditure.”

12. The applicant also relies upon the judgment dated 29.02.2012 in OA No.2087/2009 which in turn was decided relying on the judgment in OA No.655/2010 (Para 11 supra).

13. The applicant also relies upon the directions dated 24.02.2016 and 14.12.2016 by Hon'ble High Court od Delhi in WP(C) No.3832/2012 wherein respondents were directed to file an affidavit. It is pleaded that this affidavit, which was subsequently filed, has brought out that pension of both pre-01.01.2006 and post-01.01.2006 retirees is to be fixed by the same formula as was already issued vide OM dated 30.07.2015 which in turn was in compliance of the decision in OA No.655/2010 which was subsequently upheld by the Hon'ble Apex Court (Para 11 supra).

14. The matter has been heard at length at the admission stage itself. Sh. Ranvir Singh, learned counsel represented the applicant and Sh. Vijender Singh, learned counsel represented the respondents.

15. In respect of pension fixation as per 6th CPC (01.01.2006 to 31.12.2015) the applicant has relied upon many judgments



(supra) which in turn are based on the decision in OA No.655/2010 which attained finality. Accordingly, the salient features of OA No.655/2010 are required to be recapitulated here.

15.1 The applicant brought out that in the wake of 6th CPC recommendations the Government had issued notification vide Ministry of Finance letter dated 30.08.2008 wherein no distinction was made between those who are in service as of 01.01.2006 and those who have since retired by 31.12.2005 and a concordance table was also given for pay fixation. It is also pleaded that in terms of para 2 of DOP&PW OM dated 28.01.2013 (para 11.1 supra) read with DOP&PW OM dated 12.05.2017, (para 7 supra), his pension is required to be stepped up from Rs.15,305/- to Rs.15,925/- on actual basis from 01.01.2006 to 31.12.2015, instead of it being so on notional basis.

Thus, the question is whether those who had already retired before 01.01.2006 can also be considered for pay fixation at par with those who were still in service as of 01.01.2006 and pension revised thereafter for period 01.01.2006 to 31.12.2015 and whether this was adjudicated in OA No.655/2010.



15.2 In this connection, the background of OA No.655/2010 and the decision therein which had attained finality, was dealt with at length by this very bench in OA No.3559/2017 and the judgment was pronounced on 16.10.2018. With this background, the question under adjudication in OA No.655/2010 and decision making thereon is, recapitulated in paras 15.3 to 15.12 below:

15.3 The Department of Pension and Pensioners Welfare (DoP&PW) issued office memorandum dated 01.09.2008 indicating therein the method of fixation of pension for both, those who retired prior to 01.01.2006 as well as for those who retired post-01.01.2006. Particular attention is drawn to para 4.1 and 4.2 of this letter already reproduced in para 3 supra.

15.4 Subsequently, a clarification was issued on 03.10.2008 by DoP&PW wherein para 4.2 of OM dated 01.09.2008 was clarified/modified as already reproduced in para 4 supra.

15.5 In this background, it was pleaded in OA No.655/2010 that with this clarification, the original meaning and import of para 4.2 was unauthorizedly altered on 03.10.2008 to cause adversity to pre 01.01.2006 pensioners.



15.6 Thereafter, another notification was issued by DoP&PW on 11.12.2008, wherein the instructions dated 01.09.2008 were made applicable to those who were retiring w.e.f. 01.01.2006 onwards in place of post 01.09.2008 as per said notification.

15.7 The applicant in OA No.655/2010 had pleaded that with 6th CPC, the formula for calculation of pension in respect of those who retired subsequent to 01.01.2006 was liberalised substantially with respect to the formula for calculation of pension for those who had retired prior to 01.01.2006. Basically this formula of calculation of pension for pre 01.01.2006 and post 01.01.2006 was as under:

Pre 01.01.2006

Minimum qualifying service for full pension was 33 years. The actual pension was reduced on a prorata basis for lesser qualifying service.

Post 01.01.2006

Minimum qualifying service for full pension was 20 years. Pension was to be fixed as per 50% of either last ten months average pay or the last pay, whichever is higher.

15.8 Thus, it was alleged that two classes of pensioners got created, which tantamounts to discrimination of similarly placed persons and this is what was under challenge in OA



No.655/2010 before the Tribunal which was decided on 01.11.2011.

In their decision dated 01.11.2011 the Tribunal set aside the clarification issued on 03.10.2008 (para 4 supra) and alongwith this, two other letters of DoP&PW dated 14.10.2008 and 11.02.2009 were also set aside to the extent they were creating the two classes.

With this decision, the formula of calculation of pension in respect of those who retired prior to 01.01.2006 was modified to be the same as what was applicable for those who retired after 01.01.2006. What this means is that in case for some pensioners, who had retired prior to 01.01.2006 and if their qualifying service was less than 33 years, the prorata reduced pension will remain applicable upto 31.12.2005 only and it will be stepped up e.g. to full pension w.e.f. 01.01.2006 if their qualifying service was at least 20 years, with a further proviso that revised pension w.e.f. 01.01.2006 has to be at least 50% of “the minimum of new pay scale + GP”.

15.9 The decision of Tribunal (para 15.8 supra) was challenged by the respondents before Hon'ble High Court of Delhi in WP (C) no.1535/2012 and batch cases titled **Union of India & anr. vs. Central Govt. SAG & ors.**



During the pendency of this writ, DoP&PW had already issued another office memorandum dated 28.01.2013. In view of this notification dated 28.01.2013, while delivering their judgment and dismissing this Writ Petition on 29.04.2013, the Hon'ble High Court observed as under:

“2. The only issue therefore which survives is, with respect to paragraph 9, of the office memorandum aforesaid which makes it applicable with effect from September 24, 2012, and thereby denying arrears to be paid to the pensioners with effect from January 01, 2006.

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8. We are in complete agreement with the reasoning of the Division Bench of the Punjab & Haryana High Court and adopt the same and do not burden ourselves any further. We conclude by noting that regards the substance of the view taken by the Tribunal, even the Central Government accepts its correctness, but insists to make the same applicable prospectively.

9. The writ petitions are dismissed. The decision of the Full Bench of the Tribunal is upheld but without any order as to costs.”

15.10 This decision by Hon'ble High Court (para 15.9 supra) was thereafter challenged by respondents in Hon'ble Supreme Court also. However, petition of the respondents was dismissed on 17.03.2015 (para 11 supra).

15.11 In view of the foregoing, the Tribunal's order (Para 15.8 supra) and date of its application as modified by Hon'ble High Court (para 15.9 supra) attained finality.

15.12 In compliance thereof (Para 15.11 supra), DoP&PW issued another notification dated 30.07.2015 wherein the



date of applicability of the new instruction was also revised to 01.01.2006 in place of 24.09.2012.

With this, the formula of calculation of pension for pre and post 01.01.2006 retirees became uniform and the date of giving effect to pension and arrears also became 01.01.2006 for all retirees.

15.13 This Tribunal notes that in the wake of the decision by the Tribunal in OA No.655/2010 which attained finality, the Department of Pension & Pensioners' Welfare (DOP&PW) have finally issued an OM dated 06.04.2016 which reads as under:

“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. 1.12.2006, 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 in 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 29.8.2008 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 of 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 6th 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 directed that the revised pension w.e.f. 1.1.2006 under para 4.2 of OM dated 1.9.2008 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.”



16. Sub-para 6 of OM dated 06.04.2016 (para 15.13 supra), has brought out the circumstances whenever stepping up is required to be done.

It needs to be recalled here that prior to decision in OA No.655/2010, in certain cases where the qualifying service was less than 33 years and date of superannuation was prior to 01.01.2006, the pension was initially reduced on pro-rata basis as per prevalent instructions. This reduction continued to be applicable when pension was to be revised even under 6th CPC.

However, with the decision in OA No.655/2010 and issuance of successive OMs dated 28.01.2013, 30.07.2015 and 06.04.2016 (Ref. Para 15.9, 15.12 & 15.13 supra respectively) it was directed that so long as qualifying service was more than 20 years (which was specified as per 6th CPC) one shall be entitled for full pension for period 01.01.2006 onwards, and if there was any prorata reduction done for pre 01.01.2006 retirees, it would be stepped up with a further proviso that minimum pension shall be 50% of “minimum of 6th CPC pay scale plus grade pay”. As per the decision in OA No.655/2010 and OM dated 30.07.2015 and 06.04.2016, these are the two conditions, when stepping up can take place and this was to be effective from 01.01.2006 onwards.



16.1 The contention of applicant that his pay is required to be fixed for 6th CPC, at par with those who were in service as of 01.01.2006, and pension revised thereafter to cover the period 01.01.2006 to 31.12.2015, which is being presented as a case of stepping up under OM dated 28.01.2013, is neither supported by any OM nor the decision in OA No.655/2010. This contention is, therefore, liable to be rejected.

17. It is also relevant to note here that that the system of pension revision up to 5th CPC was through concordance tables. What it means is that pay fixation before revision of pension was not required and only revised pension, corresponding to earlier pension, was to be read from respective table and implemented.

18. With 6th CPC, revised pension was to be worked out by multiplying the earlier pension by a factor subject to the revised pension being at least 50% of the “minimum of new pay scale + GP,” with a further proviso that prorata reduction in pension which may have been done if qualifying service was less than 33 years, would also not be done so long as qualifying service was more than 20 years. This was to be effective from 01.01.2006.

18.1 The instant applicant had completed 38 years of qualifying service and accordingly he would have been



granted full pension which was worked out to Rs.6772/- on 30.09.2002 when he retired and to Rs.15,305/- p.m. w.e.f. 01.01.2006. This is more than 50% of the minimum of the corresponding 6th CPC pay scale + GP (Rs.15,600 + Rs. 6600 = 22,200 i.e. Rs.11,100/-).

Therefore, no stepping up which was envisaged in terms of OM dated 28.01.2013 (Ref. para 11.1 supra) or subsequent OM dated 30.07.2015 and 06.04.2016 was called for in the case of the applicant. The pleas of applicant that this OM dated 28.01.2013, has not been implemented are thus, without any merit whatsoever.

19. With 7th CPC, the system of revision of pension was substantially changed, wherein a person, who superannuated prior to 01.01.2016, was required to be given notional pay fixation upto 7th CPC and pension revised to 50% of the pay so fixed. Attention is drawn to OM dated 12.05.2017 issued in this respect (para 7 supra). Further, in terms of the decision in OA No.655/2010 and OMs issued in compliance thereof, no prorata reduction is to be applied so long as qualifying service has been at least 20 years.

In keeping with this, the pension fixation on notional basis in respect of the applicant under 6th CPC w.e.f. 01.01.2006 was worked out to Rs.15,925/- p.m. This is only an intermediate stage to revise the pension under 7th



CPC w.e.f. 01.01.2016. This intermediate stage for 6th CPC cannot be applied on actual basis, as is being pleaded by the instant applicant. In this regard specific attention is drawn to sub-para 17 of OM dated 12.05.2017 (para 7 supra). These pleas are, therefore, without any basis and are liable to be rejected.

20. All the pleas put forth by the applicant are, therefore, without any basis or merit. They are neither in conformity to a judicial pronouncement nor in terms of any OM issued in this respect. The plea that OM dated 28.01.2013 was not correctly implemented is also devoid of merit as brought out above. All the pleas put forth are, accordingly, liable to be rejected.

21. In keeping with above, the OA does not have any merit and is accordingly dismissed at admission stage itself. No costs.

22. Pending MA No.1766/2020 is also disposed of.

(Pradeep Kumar)
Member (A)

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