

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00068/14
with MA No.290/00216/2014

RESERVED ON: 04.07.2016

Jodhpur, this the 18th day of August, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

B.L.Sharma s/o Shri Phusa Ramji Sharma, aged about 82 years, b/c-Brahman, R/o-H.No.5-D-1, Duplex Colony, Bikaner-334003 (Raj.) (Office Address:- Retired from service on 29.02.1991 as Superintendent of Post Offices).

.....Applicant

By Advocate: Shri S.P.Singh

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi
2. The Secretary, Ministry of Personnel, Public Grievances and Pensions, Dept. of Pension & Pensioners' Welfare, Lok Nayak Bhawan, New Delhi.
3. The Chief Post Master General, Rajasthan Circle, Jaipur-302007.
4. The Director of Accounts (Postal), Jaipur.

.....Respondents

By Advocate : Mr. K.S.Yadav

ORDER

The present OA has been filed by the applicant praying for the following reliefs :-

- (a) That the fixation of pension Rs. 9230/- in pursuance of letter dated 4-7-2013 (Annexure-A/1) deserves to be quashed and set aside and the fixation of pension Rs. 9375/- to be fixed and consequential benefits may be granted in accordance with law.
- (b) That the para-9 of the letter dated 28-1-2013 (Annexure-A/3) deserves to be quashed and set aside and the respondents may kindly be directed to grant arrears during the period 1.1.2006 and 23.9.2012 with interest @ 18%.
- (c) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (d) That the costs of this application may be awarded to the applicant.

2. Brief facts of the case are that the applicant retired from the post of Superintendent of Post Offices on 28.02.1991. The respondents vide letter dated 04.07.2013 (Ann.A/1) fixed the pension of the applicant at Rs. 9230/- whereas the applicant is claiming it as Rs. 9375/-. According to the applicant, the respondents have not taken into consideration Grade Pay of Rs. 4800/- in Pay Band-2 under Table-14, but fixed the pension in accordance with Grade Pay of Rs. 4600/-. The respondents have also not paid arrears for the period from 1.1.2006 to 23.9.2012. In this regard, the applicant has filed representations dated 19.7.2013 and 3.6.2013 reiterating his claim (Ann.A/4 and A/5). It is further averred that the respondents, vide para 4.2 of letter dated 01.09.2008 has clarified that- 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. The applicant has mentioned that in the 5th Pay Commission there existed pay scale of Rs. 7500-250-12000 without any Grade Pay. In the 6th Pay Commission there are Pay Bands and Grade Pay and the applicant falls under Table-14 which includes Pay Band-2 and Grade Pay of Rs. 4800/-, but the respondents fixed the pension of the applicant in accordance with Grade Pay of Rs. 4600/-. The respondents vide letter dated 28.1.2013 (**Ann.A/3**) mentioned in para-2 that – 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 dated 30.8.2008. Further, vide para 8, it is stated that all other conditions as given in OM dated 1.9.2008 as amended from time to time shall remain unchanged. Para-9 of the same letter states that these orders will take effect from the date of approval by the Government i.e. 24.09.2012, and, there will be no change in the amount of revised pension/family pension paid during the period 1.1.2006 to 23.9.2012 and, therefore, no arrears will be payable on account of these orders

for that period. In view of above, the applicant filed representation dated 27.4.2013 (**Ann.A/7**) and stated that para 4.2 of letter dated 1.9.2008 clearly says that fixation of pension will be subject to the provisions that the revised pension in no case should 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 has retired.

The applicant has also relied upon the judgment of the Division Bench of the Hon'ble Punjab and Haryana High Court in Writ Petition (C) No.19641/2009 – R.K.Agrawal and Ors. Vs. State of Haryana and Ors. and judgment dated 29.04.2013 of Hon'ble High Court of Delhi in Writ Petition No. 1535/2012- Union of India vs. Central Government SAG and Ors. He then goes on to reproduce para 26 of the judgment of Punjab and Haryana High Court where the issue has been dealt with at length. The applicant submits that the erroneous interpretation of the respondents caused him great prejudice. Pursuant to the orders passed by the Hon'ble High Courts, the applicant submitted representations to the respondents, but to no avail. Therefore, the applicant has filed the present OA praying for the reliefs as enumerated above.

3. By way of reply to the OA, the respondents have submitted that at the time of retirement on 28.02.1991, the applicant was drawing pay scale of Rs. 2000-3500 in 5th CPC and not Rs. 2375-

3500 as stated by the applicant. Thus, S.No. 13 of the Annexure attached to respondent No.2 OM dated 28.01.2013 (Ann.A/3) and 6th CPC PB-2 Rs. 9300-24800 with G.P. Rs. 4200 was to be taken into account for deciding minimum pension as per OM dated 28.1.2013, which comes to Rs. 8145/-. So far as the applicant's contention that his minimum pension should have been Rs. 9375/- with reference to S.No.15 of Annexure attached to OM dated 28.1.2013 by taking into account the scale of Rs. 7500-12000 in 5th CPC and 6th CPC PB-2 Rs. 9300-34800 with GP Rs. 4800 is not correct, as per extant order dated 28.1.2012.

The respondents have further submitted that the applicant retired from the pay scale of Rs. 2000-3500 of 4th CPC. Its normal replacement scale in 5th CPC was Rs. 6500-10500. The upgraded scale Rs. 7500-12000 given to PSS Gr.B in 5th CPC after retirement of the applicant cannot be taken into account for fixation of minimum pension as clarified by respondent No.2 vide its OM dated 11.2.2009 (Ann.R/3). The respondents have further submitted that the applicant is not entitled to any benefit as per para 4.2 of OM dated 1.9.2008 (Ann.A/6) or as per OM dated 28.1.2013 (Ann.A/3). The provisions of both the OMs have correctly been applied by respondent No.4 in fixation of his pension @ Rs. 9130/- w.e.f. 1.1.2006 and in cancellation of

stepped up pension w.e.f. 24.9.2012, which was inadvertently authorized.

4. The applicant has filed rejoinder to the reply filed by the respondents. While reiterating the averment made in the OA, the applicant submits that according to 5th Pay Commission, the revised scale of pay of the applicant was Rs. 7500-250-12000, which is evident from Ann.R/2 page 85 of the OA, therefore, it is clear that the applicant's pay scale was Rs. 7500-250-12000 which is admitted by the respondents. Further, in the 6th Pay Commission the pay scale of Rs. 7500-12000 is replaced by Grade Pay of Rs. 9300-34800 with Grade Pay Rs. 4800, which is evident from Table S-14 in accordance with CCS (Revised Pay) Rules, 2008 (**Ann.A/8**). The respondents vide letter dated 30.8.2008 (**Ann.A/14**) confirmed the pay scale of Rs. 7500-12000. Thus for pre-revised basic pay of Rs. 7500, the pay in the Pay Band is Rs. 13950 with Grade Pay Rs. 4800 and revised basic pay is Rs. 18750. According to the said letter, at the time of filing the OA, the minimum pension of the applicant was claimed as Rs. 9375/- by formula of 50% of total Pay in the Pay Band + Grade Pay. The applicant further submits that his last pay drawn was treated as Rs. 8250/- on the basis of which his pension was fixed at Rs. 4039/- on the recommendations of 5th CPC. As per this table Rs. 8250/- is equivalent to Rs. 15350/- + Rs. 4800/- = Rs. 20150. Therefore, his

pension should have been fixed as Rs. 10075/- and not 9130/-, 9230/- or Rs. 9375/-. The applicant further reiterates that the matter is squarely covered in Writ Petition 1535, 2348 and 2350/12 decided by Hon'ble High Court of Delhi vide order dated 29.4.2013. The SLP (Civil) 23055/2013 filed by the Union of India against the order dated 29.4.2013 stands also dismissed by the Hon'ble Apex Court vide order dated 29.7.2013. Alongwith the rejoinder, the applicant has also annexed A/14 to A/17 documents in support of his case.

5. The applicant has filed a Misc. Application No.290/00216/2014 for interim prayer and for taking documents on record. The respondents have filed reply to this Misc. Application to which the applicant has filed a rejoinder.

6. Heard both the parties and perused the material placed on record.

7. The contention of the applicant, who retired from the post of Superintendent of Post Offices on 29.02.1991, is that his pension has been revised wrongly by the respondents under the 6th CPC, to a revised Pay Band with Grade Pay. He also claims that all consequential benefits along with arrears may be granted to him for the period from 1.1.2006 to 23.9.2012, in accordance with law.

8. The applicant states that in para 4.2 of the Government of India OM dated 01.09.2008, it is stipulated that 50% of the

minimum of the pay in the Pay Band plus Grade Pay of the post from which the pensioner retired would be the revised pay of the pension under the 6th CPC. Para 4.2 of the said OM clarified that the pension, in no case, shall be lower than 50% of the minimum of the pay in the Pay Band plus Grade Pay corresponding to the pre-revised pay scale from which the pensioner retired. It is emphasised in the OA, that in view of the cabinet approval and OM dated 01.09.2008 denial of 50% of the basic Pension would be illegal.

9. The respondents take refuge under subsequent clarificatory OMs issued by the Government dated 03.10.2008 and 14.10.2008 to clarify para 4.2 of the OM dated 01.09.2008.

10. The issue before the Tribunal is that of correct interpretation of the recommendations of the Sixth Pay Commission report, which stands accepted by the Government vide resolution dated 29.08.2008. This resolution was further followed by OM dated 01.09.2008 to define the minimum revised pension. Para 4.2 of OM dated 01.09.2008 stipulates that – “Revised pension in no case shall be lower than 50% 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 retired.”

 Subsequent to the issue of the resolution of 29.08.2008 and OM dated 01.09.2008, the Department of Pension and Pensioners'

Welfare issued two OMs dated 03.10.2008 and 14.10.2008, to clarify Para 4.2 of OM dated 01.09.2008. It is the language used in the aforesaid two OMs, which led to ambiguity and wrong interpretation of the intent of the benefit to be granted to the pre-2006 retirees.

This issue has already been dealt with by various judicial fora and has attained finality of view, by way of acceptance of the same by the Hon'ble Apex Court on 29.07.2013, in SLP (Civil) 23055/2013.

The instructions contained in formulation of 6th CPC in Para 5.1.47 and Government resolution of 29.08.2008 stated that "the fixation of pension will be subject to the provision that the revised pension in no case shall be lower than 50% 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."

The OM dated 03.10.2008 and 14.10.2008, deleted the words "sum of the" and "grade pay thereon corresponding to the pre-revised pay scale" and added "irrespective of the pre-revised scale of pay plus" – implying that revised pension is to be fixed at 50% of minimum of pay. Thus, changing the entire "modified parity/formula adopted by Central Government in pursuance of VI CPC."

11. This matter has already been adjudicated at length and is not res-integra. The CAT-Ernakulam Bench in OA no. 715/2012, Hon'ble High Court of Kerala in R.P. No.741/2014 and O.P. (CAT) No.4/2014, CAT-Principal Bench in OA No.655/2010 and others and OA No.1165/2011 and others, Hon'ble High Court of Punjab and Haryana in W.P. (C) No. 19641/2009 and the Hon'ble Supreme Court in Civil Appeal No. 8875-76 of 2011 with C.A. No. 1998 of 2012, C.A. No. 3564 of 2012, C.A.No. 3907 of 2012, C.A. No.4581 of 2012, C.A. No.4952 of 2012, C.A.No.4980 of 2012, C.A. No.4599 of 2013 and C.A. No. 1 of 2015 and S.L.P (C) No.36148-36150 of 2013, S.L.P. (C) No.16780-16782 of 2014 and S.L.P (C) No. 16903-16904 of 2015 wherein the VI CPC pension recommendations and Government of India approval of the same for pre-2006 pensioners was discussed at length. Hon'ble Delhi High Court vide their order dated 29.04.2019 in Writ Petition No. 1535/2012 has in unequivocal terms decided the issue. To clarify the issue, they have cited para 21 to 26 of the judgment dated 21.12.2012 of the Division Bench of the Punjab and Haryana High Court and the reasoning given therein. Para 23 of judgment of the Punjab and Haryana High Court states that:-

“....It is not in dispute that vide resolution dated 29.08.2008, recommendations of the 6th Central Pay Commission were accepted by the government and the pension was also to be fixed on the basis of formula contained therein. We have already reproduced the recommendations of the 6th Central Pay Commission, as contained in para 5.1.47, which was accepted by the government vide Item No. 12 of resolution dated 29.08.2008 with certain modifications. Based on this resolution, OM dated 01.09.2008 was issued.The clear purport and

meaning of the aforesaid provision is that those who retired before 01.01.2006 as well were ensured that their revised pension after enforcing recommendations of the 6th Central Pay Commission, shall not be less than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioners had retired. However, notwithstanding the same and without any provocation, the junior functionaries in the Department of Pension nurtured a doubt "though there was none" and note was prepared on that basis, which led to issuance of OMs. dated 03.10.2008 and 14.10.2008 The effect of these two OMs. was to make revision in the pension of pre-2006 retirees by giving them less than 50% of the sum of minimum of the pay in the pay band."

Para-25 of the judgment explains by way of a comparative table, the intent of original resolution No.38/37/8-P&PW (A) dated 29.08.2008 – Para 5.1.47 (Page 154-155) and Para 4.2 of OM dated 01.09.2008 and the subsequent changes in the garb of clarification vide OM dated 03.10.2008. Finally, the Hon'ble High Court concluded that they are in full agreement with the findings of the Full Bench judgment dated 01.11.2011 and the reasoning given by the Punjab and Haryana High Court in para-26 of the judgment, which is reproduced below:-

"26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is clear that the revised pension of the pre-2006 retirees should not be less than 50% 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 held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired has been given a go-by by deleting the words 'sum of the' 'and grade pay thereon corresponding to the pre-revised pay scale' and adding 'irrespective of the pre-revised scale of pay plus' implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words 'sum of the' 'and grade pay thereon corresponding to the pre-revised scale' 'and addition of the words 'irrespective of the prrevised scale of pay plus', as introduced by the

respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet...

26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent OMs. dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures that "the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% 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", this would clearly mean that the pay of the retiree i.e who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon...."

It is pertinent to point out that subsequently, OM dated 06.04.2016 of Ministry of Personnel, PG and Pensions, Department of Pension and Pensioners' Welfare has also been issued, further fortifying the case of the applicant. Para 2, 4 and 6 of the aforementioned OM state that :-

"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.

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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.

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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."

12. In view of aforementioned discussions, Ann.A/1 fixing the pension of the applicant at Rs. 9230/- by the respondents vide letter dated 04.07.2013 and, any subsequent letter in this regard, are quashed. The respondents are directed to re-examine the matter in wake of the law laid down by various judgments as well as the M/o Personnel, PG and Pensions, Department of Pension and Pensioners' Welfare OM No. 38/37-P&PW (A) dated 06th April, 2016, as discussed above, and refix the pension of the applicant accordingly, within a period of two months and pay the arrears of pension within two months thereafter. In case, the arrears are not paid within the prescribed time limits, it will also carry interest at the rate of 9%.

13. The OA stands disposed of accordingly with no order as to costs. In view of disposal of the OA, no order is required to be passed in MA No.290/00216/2014, which also stands disposed of accordingly.

Praveen Mahajan
(PRAVEEN MAHAJAN)
Administrative Member

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