

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00093/2015

RESERVED ON: 08.07.2016

Jodhpur, this the 18th day of August, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Jetha Ram Suthar s/o Megha Ram Suthar, aged about 77 years, r/o Mohalla Purani Ginani, Near Chantel House, Bikaner (Office Address:- Retired from service on 31.8.1996 as Asst. Director, Postal Services, on superannuation).

.....Applicant

By Advocate: Shri S.P.Singh

Versus

1. Union of India, through the Secretary, Government 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 Postmaster General Rajasthan Western Region, Jodhpur.
5. The Director of Accounts (Postal), D-1 Jhalana Dungari, Jaipur-302004.
6. Superintendent of Post Offices, Bikaner Division, Bikaner.

.....Respondents

By Advocate : Shri B.L.Bishnoi

ORDER

In the present OA filed u/s 19 of Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (a) That the fixation of pension Rs. 9645/- in pursuance of letter dated 25-3-2014 intimated vide letter dated 20-11-2014 deserves to be quashed and set aside and the pension of Rs. 10540/- 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 PPO No. SP1514-(N) dated 23-10-2013 may kindly be revised and pension of Rs. 10540/- may kindly be fixed in accordance with 6th CPC and consequential benefits may kindly be granted.
- (d) That Memo No. Pension/W.R/27/2014 dated 6-1-2015 may kindly be declared illegal, unjust and deserves to be quashed and set aside.
- (e) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper 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.
- (f) That the costs of this application may be awarded to the applicant.

2. Brief facts of the case are that the applicant retired as Asst. Director Postal Services (PSS Group-B) in the scale of 7500-250-12000 and his last pay drawn was Rs. 8750/-. As per the table of letter dated **30.8.2008 (Ann.A/11)**, the pay of Rs. 8750/- is equivalent to Rs.16280/- + Grade Pay Rs. 4800/- = 21080/-. It is clearly submitted that 50% of this comes to Rs. 10540/- PM while the applicant is paid Rs. 9645/- which is evident from PPO No.1541 (**Ann.A/5**). The applicant has averred that vide para 4.2 of OM

dated 1.9.2008 on implementation of Government's decision on the recommendations of the Sixth Central Pay Commission – Revision of pension of pre-2006 pensioners/family pensioners etc. (Ann.A/7), it has been clarified that- 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 retired. It is mentioned in the OA that in 5th CPC the pay scale was Rs. 7500-250-12000 and there was no Pay Band and Grade Pay. In the 6th CPC, Pay Band and Grade Pay was introduced and the applicant falls under **Table-14** which includes Pay Band-2 and Grade Pay Rs. 4800/- but the respondents have fixed the pension of the applicant at Rs. 9645/-. The applicant has further averred that vide para-2 of letter dated 28.1.2013 (Ann.A/3), it has been clarified 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 (Ann.A/8).

The applicant has further stated that the Hon'ble High Court of Delhi, vide Writ Petition No.1535/2012 titled Union of India vs. Central Govt. SAG and Ors. vide order dated 29.4.2013 (Ann.A/9) has clarified the contention raised in para-9 of OM dated 28.1.2013 (Ann.A/3) whereby the arrears of the pensioners w.e.f. 1st January, 2006 is denied. The applicant cites judgment of Division Bench of the Hon'ble Punjab and Haryana High Court in Writ Petition (C) No.19641/2009 titled R.K.Agarwal and Ors. vs. State of Haryana & Ors., para 26, wherein it has been observed that *"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 para 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 word '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 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".-

Pursuant to the order passed by Hon'ble High Court, the applicant represented several times to the respondents, but to no avail. Para 2 of the resolution dated 29.08.2008 which is accepted by the Government of India states that linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Para-12 of the notification dated 29.08.2008 further states that this is consistent with the fitment benefit being allowed in cases of existing employees. 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. However, since all his pleas fell on deaf ears, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

3. The respondents, by way of reply, while denying the averments made in the OA submitted that the applicant was

drawing pay of Rs. 8750 w.e.f. 1.6.1996 in the pay scale of Rs. 7500-250-12000 and retired on attaining the age of superannuation on 31.8.1996. After processing his pension case, the same was forwarded to respondent No.5, who after conducting required checks, authorized pension @ Rs. 4267/- per month w.e.f. 1.9.1996. After issuance of DoP&PW OM dated 1.9.2008 (**Ann.A/7**), the Post Master General, Jodhpur re-assessed his pension case vide letter dated 10.11.2010, received from the Post Master Bikaner HO vide letter dated 14.6.011 (**Ann.R/2 and R/3**). The respondent-department confirmed the re-assessment of pension done by the Post Master, Bikaner approved by the Post Master General, Jodhpur and authorized pension of Rs. 9645/- w.e.f. 1.1.2006 vide authority letter dated 24.6.2011(**Ann.R/4**) and issued a new computerized PPO No.1541 (**Ann.A/5**) in favour of the applicant. The issuing authority's letter dated 24.6.2011 has correctly implemented provisions of para 4.1 and 4.2 of OM dated 1.9.2008. As per para 4.1, his pension w.e.f. 1.1.2006 comes to Rs. 9645/- and as per para 4.2, applicant's pension shall not be lower than 50% of minimum of the pay in the Pay Band + Grade Pay corresponding to the pre-revised pay scale from which the pensioners had retired. The applicant retired on 31.08.1996 drawing pay in the pay scale of Rs. 7500-250-12000 corresponding to Rs. 4800. Thus, as per para 4.2, his pension shall not be less than Rs. 6050 (Rs. 7300+4800/2) (as stated by the

respondents). The pension as per para 4.1 of Ann.A/7, is more i.e. Rs. 9645 which was correctly authorized and para 4.2 of Ann.A/7 is not applicable to the applicant. The respondents have further submitted that while issuing PPO No.1541 (Ann.A/5), provisions of DoP&PW OM dated 28.1.2013 (Ann.A/3) have also been applied correctly. As per para 2 of the said OM (Ann.A/3), the pension of pre-2006 pensioners as revised w.e.f. 1.1.2006 in terms of para 4.1 and 4.2 of OM dated 1.9.2008 needs to be further stepped up w.e.f. 24.9.2012 upto 50% of sum of the minimum of pay in the pay band and grade pay corresponding to the pre-revised scale, from which, the pensioner had retired, as arrived at with reference to the fitment table annexed to the Ministry of Finance OM dated 30.8.2008 (Ann.A/11). As is evident from S.No.15 of Ann.A/11, his pension w.e.f. 24.9.2012 was to be stepped up to Rs. 9375/- if it was less than this. Since his pension as per para 4.1 was Rs. 9645/- which is more than Rs. 9375/-, therefore, provisions of Ann.A/11 are not applicable to the applicant.

In their reply, the respondents state that the applicant has demanded pension of Rs. 10450/- by fixation of his pay in 6th CPC to Rs. 21080/- with reference to his last pay drawn i.e. Rs. 8750/- and arrears w.e.f. 1.1.2006. However, such fixation of pay is not covered either by OM dated 1.9.2008 (Ann.A/7) or OM dated 28.1.2013 (Ann.A/3). Even as per Para 26 of the judgment Hon'ble

Punjab and Haryana High Court Delhi High Court as referred to in the judgment of the Hon'ble Delhi High Court dated 29.4.2013 (Ann.A/9), the fixation of pension will be subject to the provision that revised pension in no case, shall be lower than 50% of the sum of the pay of the minimum of pay in the pay band and grade pay thereon corresponding to the pre-revised scale, from which the pensioner had retired. Thus, the judgment of Hon'ble Delhi High Court also stands followed. As per para 2 of the judgment, the Hon'ble High Court had already taken into account the provisions of OM dated 28.1.2013 (Ann.A/3) and stated that "the only issue, therefore, which survives is, with respect to para 9 of the OM aforesaid which makes it applicable w.e.f. 24.9.2012 and thereby denying arrears to be paid to the pensioners w.e.f. 1.1.2006" and ordered accordingly. The respondents pleaded that even the provisions of OM dated 28.1.2013 are not applicable and hence, no arrears are payable. Further, as intimated vide DoP&PW OM dated 5.3.2015 (Ann.R/5), the issue of revision of pension of pre-2006 pensioners w.e.f. 1.1.2006 as covered under SLP No.36148-50/2013 in the Apex Court, which have been tagged with Civil Appeal No.8875-76/2011 filed by the Ministry of Defence, in a similar matter, is sub judice.

The respondents have submitted that the representations of the applicant have already been replied vide letter dated

6.1.2015 (Ann.A/2). His pension under different provisions stated by him in the OA comes as under:-

- (i) Old pension as on 31.12.2005 Rs. 4267/- p.m.
- (ii) Consolidated pension as per Para 4.1 of OM dated 1.9.2008 (Ann.A/7) Rs. 9645/- p.m.
- (iii) Minimum pension to be ensured as per Para 4.2 of OM dated 1.9.2008 (Ann.A/7) [Rs. 7500+4800/2] = Rs. 6150/-
- (iv) Pension to be stepped up with reference to Para 2 and 4 and S.No. 15(S-14) of Annexure to OM dated 28.1.2013 (Ann.A/3) if it is less to Rs. 18750/2 = Rs. 9375/- p.m.

According to the respondents, the pension, vide OM dated **1.9.2008 (Ann.A/7)**, has been correctly fixed as per para 4.1 of the OM and para 4.2 is not applicable to the applicant, since pension as per para 4.1 is more than pension as per para 4.2. The provisions of OM dated **28.1.2013 (Ann.A/3)** are not applicable in the case of the applicant since minimum of pension to be ensured to the pensioner as per para 4.2 of OM dated 1.9.2008 and as per OM dated 28.1.2013 is less than the pension being paid to the pensioner as per para 4.1 of OM dated 1.9.2008. Therefore, the respondents submit that the applicant is not entitled to any relief.

4. The applicant has filed rejoinder to the reply of the respondents and reiterated the averments made in the OA.

Similar matter stands squarely covered in Writ Petition (C) No. 1535, 2348, 2349 and 2350/2012 has been decided by Hon'ble High Court of Delhi vide order dated 29.4.2013 and SLP (Civil) 23055/2013 filed by Union of India against the order dated 29.4.2013 stands dismissed by Hon'ble Apex Court vide order dated 29.7.2013. He has further stated that the respondents have annexed Ann.R/5 which is totally irrelevant now, since the Hon'ble Apex Court has dismissed all SLPs filed by the Govt. of India including SLP (C) No.16780 to 16782 of 2014, SLP (C) No.16903-16904 and 8875-8876 of 2011 on 24.3.2015.

5. Heard learned counsel for the parties and perused the material available on record.

6. The applicant is a pre-2006 retiree and is claiming benefits due to him, as envisaged in Para 4.1/4.2 of the Government of India OM dated 01.09.2008. He avers that his pension has been wrongly fixed by the respondents and the benefits, in accordance with the recommendations of the 6th CPC and duly accepted by the Government of India, have not been granted to him. He has also staked a claim for grant of arrears from 01.01.2006 to 23.09.2012 with interest.

This Tribunal vide order dated 12.08.2016, in OA No.290/00068/14 has dealt with a similar issue in detail.

To briefly recapitulate, the recommendations of the 6th CPC were accepted by the Government of India vide resolution dated 29.08.2008. This was followed by issue of OM dated 01.09.2008, referred to above. The confusion was started by issue of two subsequent OMs dated 03.10.2008 and 14.10.2008. Hence, several applications were filed in different benches of the Central Administrative Tribunal on the same issue by way of different OAs. The matter has since attained finality in compliance of the order dated 17.03.2015 of the Hon'ble Supreme Court in SLP (C) No. 36148/2013. The landmark judgment of CAT-Principal Bench, New Delhi has put to rest all the principal and ancillary issues by quashing two aforesaid OMs dated 03.10.2008 and 14.10.2008 – which went beyond the resolution of 29.08.2008 adopted by the Government by issuing clarification, which tampered with the original cabinet approval, making it ultra vires, and illegal. Such course of action could not be resorted to without referring the matter again to the cabinet, to modify its earlier resolution of 29.08.2008.

The Principal Bench of this Tribunal in order dated 1.11.2011 in O.A No. 655/2010 with O.A No. 3079/2009, O.A No. 306/2010 and O.A No. 507/2010 quashed and set aside the clarificatory OMs dated 3.10.2008 and 14.10.2008 and directed the respondents to refix the pension of all pre-2006 retirees with effect from 1.1.2006

based on the resolution dated 29.8.2008 i.e the pay of pre-2006 retirees should not be less than 50% of the sum of the minimum of the pay in the pay band and grade pay thereon corresponding to the pre-revised pay scale held by the pensioner at the time of retirement. Any change in the cabinet resolution cannot be made by administrative orders modifying the same.

Ultimately, the Government of India has put its stamp on the issue by issuing Department of Pension and Pensioners' Welfare OM dated 6th April, 2016 stating that :-

"Sub:- Revision of pension of pre-2006 pensioners - delinking of revised pension from qualifying service of 33 years.

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 1.1.2006, 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 6 th 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, Emakulam 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.

7. Ministry of Agriculture, etc. are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and Subordinate Offices under them for revising the pension of all those pre - 2006 pensioners who had rendered less than 33 years of qualifying service at the time of retirement in the manner as indicated above on top priority. Revised Pension Payment Orders in all these cases may also be issued immediately.

8. All pension disbursing offices/banks are also advised to prominently display these orders on their notice boards for the benefit of pensioners."

I am not burdening the judgment by discussing the issues all over again, which are already available in the pronouncements cited above and there is unanimity of view by various judicial fora and Government of India on this issue.

7. In the facts and circumstances of the case, I am of the view that it would be in the interest of justice, if the respondents re-examine the matter in the 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, reproduced above, and fix the pension of the applicant accordingly. This should be done within a period of two months. The arrears of pension may be paid 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%.

8. The OA stands disposed of accordingly with no order as to costs.

Praveen Mahajan
(PRAVEEN MAHAJAN)
Administrative Member

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Cross
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