

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 579 of 2013

Friday, this the 31st day of January, 2014

CORAM:

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

T.K. Radhakrishna Pillai,
Inspector of Central Excise (Retd.)
Thazhapallil House, Cheppad P.O.,
Aleppey District : 690 507

- Applicant.

(By Advocate Mr. C.S.G Nair)

Versus

1. Union of India
Represented by the Secretary
Ministry of Pension and Pensioner's Welfare
North Block, New Delhi – 110 001
2. Chief Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin – 682 018
3. Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin – 682 018
4. Pay and Accounts Officer
Central Excise, Central Revenue Buildings
I.S Press Road, Cochin – 682 018
5. Pay and Accounts Officer
Central Pension Accounting Office
Trikoort II Complex, Bhikajicama Place
R.K Puram, New Delhi – 110 066

- Respondents


(By Advocate Mr. George Joseph, ACGSC)

This application having been heard on 31.01.2014, the Tribunal on the same day delivered the following:

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ORDER**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant took voluntary retirement as Inspector of Central Excise on 31.12.2000. He had a total service of 25 years, 03 months and 05 days including the weightage of 05 years. At the time of his retirement his pay scale was Rs. 6500-10500. According to him, the corresponding pay band as per CCS (Revised Pay) Rules, 2008 was Rs. 9300-34800 with Grade Pay of Rs. 4600/- and the minimum pay in the pay band of Rs. 9300-34800 in respect of those who were in the pay scale of Rs. 6500-10500 is Rs. 12090/-. His representation for revision of pension with effect from 01.01.2006 on the above basis was rejected vide Annexure A-9 order dated 01.05.2013. Aggrieved, he has filed this O.A for the following reliefs:

- (i) To call for the records leading upto the issue of Annexure A-9 and quash the same;
 - (ii) To declare that the applicant is entitled for revision of pension as per para 4.2 of Annexure A3 OM dated 01.09.2008, i.e., 50% of the minimum of the pay in the pay band plus grade pay of Inspector of Central Excise, which is Rs. 12090 + Rs. 4600 GP with effect from 01.01.2006;
 - (iii) To direct the respondents to issue revised PPO to the applicant specifying the pension on the basis of Annexure A4 and A6 and para 4.2 of Annexure A3 OM dated 01.09.2008 i.e., 50% of the minimum of the pay in the pay band plus grade pay of Inspector of Central Excise which is Rs. 12090 + Rs. 4600 GP with effect from 01.01.2006 and also the corresponding family pension and grant all consequential benefits including arrears of pension within a stipulated period;
 - (iv) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case;
 - (v) To grant cost of this O.A.
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2. The applicant contended that there is no stipulation of any minimum period of service for eligibility of pension @ 50% of the minimum of the pay in the pay band plus grade pay of the post from which the pensioner had retired. As per para 4.2 of O.M. dated 01.09.2008, the pension should in no case shall be lower than fifty percent of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. The Government had clarified vide O.M. dated 13.11.2009 that the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs. 4200/- in the pay band PB-2 will be granted grade pay of Rs. 4600/- in the pay band PB-2 corresponding to the pre-revised scale of Rs. 7450-11500 with effect from 01.01.2006. The Principal Bench of this Tribunal in the order dated 01.11.2011 in O.A. No. 655/2010 and connected cases had quashed the O.Ms dated 03.10.2008 and 14.10.2008. The Hon'ble High Court of Delhi has upheld the said decision in the judgement dated 29.04.2013 in W.P(C) No. 1535/2012 and connected cases. Those decisions are applicable to the applicant as judgement in rem. This Tribunal also had followed the above decisions in the order dated 16.08.2013 in O.A. No. 715/2012 and O.A. No. 1051/2012.

3. The respondents countered that the 5th Central Pay Commission (CPC) pay scale of Rs. 5500-9000 in respect of Inspectors of the Central Excise was raised to Rs. 6500-10500 only with effect from 21.04.2004, i.e. after the retirement of the applicant on 31.12.2000. Therefore, the applicant is eligible only for 5th CPC pay scale of Rs. 5500-9000 and corresponding 6th CPC pay band with grade pay, which is Rs. 9300-34800 + Rs. 4200. The O.M. dated



11.02.2009 clearly states that the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners. Therefore, the provisions mentioned in the O.M dated 13.11.2009 is applicable only to those who were in the Central Government service as on 01.01.2006. Hence the 6th CPC revision of pension of the applicant authorised vide order dated 24.11.2011 is correct.

4. I have heard Mr. C.S.G. Nair, learned counsel for the applicant and Mr. George Josesph, learned ACGSC for the respondents and perused the records.

5. The issues for determination in this O.A are whether the applicant is entitled to grade pay of Rs. 4600/- and whether the applicant is entitled to 50% of the minimum of the pay in the pay band PB-2 plus the grade pay of the post from which he had retired..

6. As regards the first point, the applicant relies on O.M. dated 13.11.2009 for the benefit of upgradation of the post of Inspectors of Central Excise to grade pay of Rs. 4600/-. According to the respondents it is not admissible to him as per para 5 of O.M. dated 11.02.2009. The Principal Bench of this Tribunal in paragraph 30 of the order dated 01.11.2011 in O.A. No. 655/2010 and connected cases, held as under :

"30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the

resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs."

(emphasis supplied)

As the O.M. dated 11.02.2009 has been set aside as above, the contention of the respondents that the applicant is not eligible for grade pay of Rs. 4600/- is not tenable.

7. Following the decisions of the Principal Bench of the Tribunal in O.A. No. 655/2010 and connected cases and the judgement dated 29.04.2013 of the Hon'ble High Court of Delhi in W.P.(C) No.1535/2012 and connected cases, this Tribunal had allowed the O.A. Nos. 715/2012 and 1051/2012 as under:

"7. In the light of the above, the settled law is that in no case the pension of the pre-2006 pensioners shall be lower than fifty percent of the minimum of the pay in the Pay Band plus Grade Pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. It means that pension of a pre-2006 retiree has to be first calculated taking into account the revised pay in the pay in the Pay Band plus Grade Pay corresponding to the pay scale from which he retired proportionate to the length of his service and then find what is 50% of the minimum of the Pay Band plus Grade Pay and fix higher of the two as his pension. Hence the applicants are eligible to get the minimum pension in the Pay Band plus Grade Pay of the Deputy Office Superintendent, the post from which they had retired, with effect from 01.01.2006. Accordingly, the O.As are allowed as under.

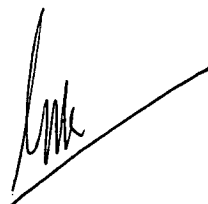
8. The respondents are directed to issue revised Pension Payment Order (PPO) to the applicants specifying the pension on the basis of Para 4.2 of the O.M. dated 01.09.2008, i.e. 50% of the minimum of the pay in the Pay Band plus Grade Pay of the Deputy Office Superintendent and also corresponding family pension and grant all consequential benefits including arrears of pension within a period of 02 months from the date of receipt of a copy of this order. No costs."

Hon'ble High Court of Kerala had dismissed the O.P.(CAT) Nos. 8/2014 and 4/2014 against the above order of this Tribunal, vide judgement dated 07.01.2014.

8. In the light of the settled law as above, a pensioner is entitled to 50% of the minimum of the pay in pay band plus grade pay of the post from which he retired. Hence the O.A is allowed as under:

Annexure A-9 dated 01.05.2013 is quashed. The respondents are directed to issue revised Pension Payment Order to the applicant specifying the pension on the basis of Annexure A4 and A6 and para 4.2 of Annexure A3 OM dated 01.09.2008 i.e., 50% of the minimum of the pay in the pay band plus grade pay of Inspector of Central Excise, which is Rs. 12090 + Rs. 4600 GP with effect from 01.01.2006 and also the corresponding family pension and grant all consequential benefits including arrears of pension within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated, the 31st January, 2014)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

Cvr..