

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 613/2009

Dated this the 3rd day of June, 2010

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.P. Vaughese S/o K.V. Paulose

Retired Assistant Director

O/o the Postmaster General

Kochi

residing at Bethel House

Njalbhagom, Kaviyoor PO

PIN 689 582

Applicant

By Advocate Mr.P.C. Sebastian

Vs

- 1 Union of India represented by its Secretary
Ministry of Communications
Department of Posts
New Delhi.
- 2 The Director General
Department of Posts
Dak Bhavan
New Delhi.
- 3 The Director of Accounts (Postal)
Kerala Circle
Thiruvananthapuram.
- 4 The Secretary to the Hon'ble Prime Minister
Public Grievance Cell
Prime Ministers' Officers
New Delhi.

Respondents.

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 3.6.2010. the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired officer of the Postal Department, is aggrieved by the refusal on the part of the respondents to revise his pensionary benefits on the basis of the revised option submitted by him consequent on partial modification of pension scheme of VI CPC, effected in December 2008 with retrospective effect from 1.1.2006.

2 The applicant, an Assistant Director of Postal Services retired on superannuation on 31.5.2006. At the time of retirement, he was drawing basic pay of Rs. 9500/- in the pay scale of Rs. 750-250-12000 with date of next increment as 1st February in the pre-revised scale. While so, pursuant to the recommendations of the VI CPC, the pay scale was revised to Rs. 9300-34800 with grade pay of Rs. 4800/- applicable to persons who retire w.e.f. 2.9.2008 (A-1). Annexure A-1 inter alia provided that employees who retire on or after 2.9.2008 are eligible for pension at 50% of the emoluments of the last pay drawn or average emoluments which is more beneficial. This order was effective w.e.f. 2.9.2008 only. Clause 5 of the said revised pay rules provided an option to the employee to opt for the revised scale of pay. The applicant who retired before 2.9.08 opted for the revised pay scale w.e.f. 1.1.2006 since it was more beneficial to him (A-2). Accordingly his pension was fixed at Rs. 11005/- However, the 1st respondent modified Annexure A-1 O.M on 11.12.2008 extending the benefit to those who

retired during 1.1.2006 to 1.9.2008 (A-4). The applicant stated that since he retired on 31.5.2006, he is entitled to get the benefit of Annexure A-4. Hence, he submitted representations on 6.1.2009, 16.1.09 and 2.2.2009 revising his option to which he received A-8 order rejecting his request. The main contention of the applicant is that he is entitled to revision of option for pay fixation and consequential benefit of pensionary benefits.

3 The respondents in their reply statement submitted that the applicant has already opted for revision o pay w.e.f. 1.1.2006 and that the option once exercised is final. Pension Rules were amended by OM dated 2.9.2008 in tune with the revised pay rules and that re-option is allowed in the case of promotion only.

4 I have heard learned counsel for the parties and perused the records produced before me.

5 There is no dispute that the applicant retired on superannuation on 31.5.2006 and that the VI CPC recommendations were implemented w.e.f. 1.1.2006. It is also admitted that the applicant has given option for the revised scale of pay w.e.f. 1.1.2006. The revised Pension Rules were issued vide OM No. 38/37/08-P&PW(A) dated 2.9.2008. The relevant portion is extracted below:

5.2 Linkage of full pension with 33 years of qualifying service shall be dispensed with. Once a Government servant has rendered the minimum qualifying service of twenty years, pension shall be paid at 50% of the emoluments or average emoluments received during the last 10 months, whichever is more beneficial to him.

x x x x x x x

5.4 The revised provisions for calculation of pension in para 5.2 and para 5.3 above shall come into force with effect from the date of issue of this OM and shall be applicable to Government servants retiring on or after that date. The Government servants who have retired on or after 1.1.2006 but before the date of issue of this OM will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.

The above order was not applicable to persons like applicant who retired before 2.9.2008. Therefore, the pension of the applicant was governed by the rules/orders which were in force before 2.9.2008. Accordingly, he opted for pension on the basis of average emoluments which was more beneficial to him.

6 The case of the applicant is that he is entitled to be given an opportunity for revised option as the entire scenario of the pension rule position has changed with retrospective effect. Drawing support from Annexure A-9 OM dated 25.2.2003 the applicant submitted that there have been such instances of giving revised option. The case of the respondents is that the applicant has already exercised an option and that there is no provision for second option.

7 Having heard the learned counsel for the parties and after perusal of the pleadings and orders on the subject, I am of the view that after the OM dated 2.3.2008 having made applicable for grant of full pension to Government servants who retired on or after 2.9.2008 after completion of 20 years/10 years of qualifying service, the employee shall be entitled to pension at 50% of the (i) emoluments or

(ii) average emoluments received during the last 10 months, whichever is more beneficial to the Government servant. This benefit was later extended to those who retired w.e.f. 1.1.2006. The applicant who retired on 31.5.2006 and who was granted pension based on the then existing rule of average emoluments received during the last 10 months, has worked out the benefits and found that pension at 50% of the emoluments last drawn based on the revised pension rules extended to those who retired on or after 1.1.2006, is more beneficial to him. Therefore, on the basis of the modified pension scheme, he had exercised revision of option as was permissible under Annexure A-9 OM dated 25.2.2003. Relevant portion of Annexure A-9 is extracted below.

"2 The demand of the Staff Side has been examined by the Government and the President is pleased to decide that pursuant to any unforeseen developments or change of rules, a Government servant may give a revised option for pay fixation under FR 22(1)(a) within one month from the date of orders of such unforeseen developments or change of rules. Acceptance of such revised option may thereafter be examined and decided on merits by the Ministry/Department concerned with the approval of Department of Personnel & Training. In case, it is decided to allow fresh option to the Government servant concerned, the option once exercised shall be treated as final. The past case of similar nature can be referred to his department which will be decided on merit."

Here, there was undoubtedly a change of rule with retrospective effect from 1.1.2006, after the superannuation of the applicant and issuance of PPO thereafter. Accordingly, the applicant submitted revised option on 6.1.2009. I am, therefore, of the view that the applicant is entitled to exercise an option under the new pension rules granting pension at 50% of the emoluments w.e.f. 1.1.2006.

8 Further, we find that after the filing of the O.A., the Government of India, Department of Pension & Pensioners Welfare issued OM No. 38/37/08-P&PW(A) dated 10.12.2009 extending grant of full pension to Government servants who retired on or after 1.1.2006, the relevant portion of which is extracted below:

"2 In partial modification of the instructions/order issued in this respect, it has now been decided that linkage of full pension with 33 years of qualifying service shall be dispensed with, with effect from 1.1.2006 instead of 2.9.2008. The revised provisions for calculation of pension in para 5.2 and 5.3 of the OM No. 38/37/08-P&PW(A) dated 2.9.2008 shall come into force with effect from 1.1.2006 and shall be applicable to the Government servants retired/retiring after that date. Para 5.4 will further stand modified to that extent."

9 In this view of the matter, I am of the view that the applicant is entitled to revise the option. I therefore, quash and set aside Annexure A-8 order and allow the O.A. The revised option submitted by the applicant shall be taken on record, pension revised and paid accordingly within three months from the date of receipt of this order.

Dated the 3rd June, 2010.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

kmn