

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 124 of 2011
And
Miscellaneous Application No. 188 of 2011 in OA/124/2011

Wednesday, this the 10th day of October, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

S. Vijayachandran, Vimalachandralayam, Punnamoodu PO,
Mavelikara, Alleppey District, Pin-690 010. **Applicant**

(By Advocate – M/s. Varghese & Jacob)

V e r s u s

1. Deputy Director of Enforcement, Directorate of Enforcement, Ministry of Finance, Govt. of India, Chennai Zonal Office, Shastri Bhavan, 3rd Floor, 3rd Block, No. 26, Haddows Road, Chennai- 600 006.
2. Assistant Director of Enforcement, Directorate of Enforcement, Ministry of Finance, Govt. of India, WAFA Bhavan, 2nd Floor, Mavoor Road, Calicut-673 001.
3. Director of Enforcement, Ministry of Finance, Department of Revenue, 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.
4. The Pay & Accounts Officer, Ministry of Finance, Department of Revenue, Church Road, Hutments, New Delhi-110 001.
5. The Union of India, represented by the Secretary to the Govt. of India, Department of Revenue, Ministry of Finance, New Delhi-110 001. **Respondents**

(By Advocates – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 25.09.2012, the Tribunal on
10-10-12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant while working as Enforcement Officer in the pay scale



of Rs. 6500-200-10500/- was upgraded to the pay scale of Rs. 7500-250-12000/- on 4.10.2005. His basic pay was Rs. 9100/-. His next increment was due on 1.1.2006. His pay in the upgraded scale was fixed at Rs. 9250/- with the date of increment as 1.1.2006 under the provisions of FR 22(1)(a)(2) read with FR 23. When he retired on 30.6.2007 the last pay drawn was Rs. 9750/- based on which his pension was fixed at Rs. 7,238/- which was drawn till the issuing of the revision of pension order dated 8.4.2010, two years and ten months after his retirement. As per information obtained under the Right to Information Act vide reply dated 4.6.2010 his pay was re-fixed in the previous scale of pay postponing his date of next increment to 1.10.2006 instead of 1.1.2006 which resulted in loss of Rs. 240/- in pension under the revised rules as per the 6th Pay Commission. Recovery of Rs. 7,301/- was effected from the arrears of salary. His representation for restoration of pension as at Annexure A14 dated 18.10.2010 to the Secretary, Government of India, Department of Pension has not elicited any response. Aggrieved he has filed this OA for the following reliefs:-

- “a. Quash Annexure A9 order dated 15.9.2008, to the extend it's affects the applicant.
- b. Declare that the applicant is entitled to the option for fixation of pay as per the provisions contained in FR221(a)2 & FR23 and the pay fixation already made vide Annexure A2 order dated 9.11.2005.
- c. Declare that the applicant is entitled to pension under the Revised (Pay) Rules, 2008 corresponding to the pension earlier fixed vide PPO No. 1977950700312 as incorporated on page 16 of the service book (Annexure A4).
- d. Order that the recovery of Rs. 7,301/- effected from the arrear salary of the applicant and other eligible amount be released immediately.



e. Issue any other order or direction as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicant contended that he was entitled to the benefit of option for fixation of pay as per the provisions contained in FR 22(1)(a)(2) and FR 23 as was done correctly as per order dated 9.11.2005. The revision of the fixation of pay already made after his retirement by removing the benefit of aforesaid option is illegal and has caused irreparable damage to him by reducing his pay by Rs. 480/- and the consequent reduction of Rs. 240/- in his pension. Upon the implementation of the 6th Pay Commission report, instead of following the fitment formula in the case of his pension, the respondents re-fixed the pay of the applicant in the pre-revised scale unauthorizedly 2 years and ten months after his retirement in utter violation of the provisions contained in Rule 70 of CCS (Pension) Rules, 1972. He was not served with any notice prior to reduction of pay and pension and thereby denied natural justice. The denial of option available under FR 22(1)(a)(2) and FR 23 by Annexure A9 order dated 15.9.2008 is arbitrary and unreasonable.

3. Per contra, the respondents submitted that the re-fixation of the pay of the applicant vide order dated 15.9.2008 was done on the basis of Head Office instruction contained in the letter dated 10.6.2008 in respect of Shri B. Ramesh, AEO. Accordingly, an amount of Rs. 7,301/- excess paid on account of date of increment as on 1.1.2006 in the pre-revised scale was recovered from the 2nd instalment of the 6th Central Pay Commission arrears. His pension and other retirement benefits were revised vide order dated



8.4.2010 authorizing Rs. 11,335/- as revised pension before commutation. Provisions of Rule 70 of CCS (Pension) Rules, 1972 is not attracted in the instant case as there is no reduction in the original pension granted earlier. But for the implementation of the 6th CPC recommendations the original pension in the pre-revised scale would have been continued as such. A revision was warranted due to the implementation of the recommendations of the 6th CPC. While doing so the anomaly regarding the grant of increment in the pre-revised scale was set right as per Head Office instructions in a similar case. The date of increment of the applicant was inadvertently mentioned before completion of full incremental period of 12 months from the date of fixation of pay in the revised scale. The Government of India order No. 17 below FR 22 relates to option under FR 22(1)(a)(1) in favour of promotion under one time bound promotion scheme and is not applicable in the instant case.

4. In the rejoinder statement the applicant contended that the date of his increment was postponed arbitrarily and thereby allowing the normal increment only after lapse of 21 months instead of 12 months. No provisions of FR 22 or FR 23 stipulate reduction of pay in respect of an incumbent when scale of pay of his post is revised upward. A reduction in the existing pay scale or withholding or postponement of increment can be imposed only as penalty and not otherwise. The respondents were duty bound to serve a notice as required under Rule 70(2) of CCS (Pension) Rules, 1972. If there was any excess payment of pay and pension due to be realized from the applicant, the applicant could have been given an opportunity to present his

case before the authorities and clarify the position clearly with the support of relevant rules and regulations. As he was drawing higher pay than the minimum of the upgraded pay scale, the postponement of increment as in the case of Shri B. Ramesh was not applicable in his case as he was working as an Enforcement Officer in a grade higher than Shri Ramesh who was an Assistant Enforcement Officer. There was a drop in the basic pay of the applicant by arbitrarily shifting the date of increment from 1.1.2006 to 1.10.2006. Without the benefit of upgraded scale, his basic pay would have been Rs. 9300/- as on 1.1.2006. Because the date of increment was shifted from 1.1.2006 to 1.10.2006 upon granting the upgraded scale his basic pay became Rs. 9250/- as on 1.1.2006. The alleged Head Office instruction relating to the case of stepping up of pay of a senior with reference to that of a junior in the grade of Assistant Enforcement Officer is neither relevant nor similar to the case of the applicant. The case of the applicant is to be dealt with as per FR 22(1)(a)(2) and not as per Head Office instructions as alleged. The alleged Head Office instruction was never made available to the applicant before the downward reduction of his pay and pension. As per judgement dated 10.2.2010 of the Apex Court in 2011 (1) SCC (L&S) 221 - Union of India & Anr. Vs. P.N. Natarajan & Ors. the retiral benefits payable to the respondents cannot be revised to their disadvantage without giving them action oriented notice and opportunity of hearing. The provisions of 6th Central Pay Commission do not warrant any downward revision of pay in the old scale as contended by the respondents.

5. In the additional reply statement, the respondents reiterated that

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provisions of Section 70(1) are not attracted in the present case as there is no reduction in the original pension granted.

6. We have heard the learned counsel for the parties and perused the records. MA No. 188 of 2011 for condonation of delay of 514 days in filing this OA is allowed and the delay is condoned.

7. If the pay scale of the applicant was not upgraded on 4.10.2005 his basic pay would have been Rs. 9300/- on 1.1.2006. As per the revision effected by the respondents on up-gradation, his basic pay is only Rs. 9250/- as on 1.1.2006. These facts have not been controverted by the respondents nor they have explained the illegality of reduction in pay when the pay scale is upgraded. The pay of the applicant has been revised based on the analogy of incremental period contained in Head Office letter dated 10.6.2008. The said letter relates to stepping up of pay of a senior with that of a junior in the lower grade of Assistant Enforcement Officer which has no relevance to the applicant who is in the higher grade of Enforcement Officer. The case of the applicant was considered taking into account not the relevant factors but the irrelevant. No specific mention of the provisions of FR under which the pay was reduced was made in the order dated 15.9.2008 whereas it was clearly stated in the order of 9.11.2005 that his pay was fixed under FR 22 (1)(a)(2) read with FR 23. Two years and ten months after his retirement the pay of the applicant was reduced without giving him action-oriented notice and opportunity of hearing as held in P.N. Natarajan's case (supra). The contention of the respondents that provisions of Rule 70(2) of CCS (Pension) Rules, 1972 does not attract the instant case as there is no reduction in the



original pension granted is absolutely incorrect. Had they followed the fitment formula in the case of pension upon the implementation of the 6th Pay Commission's report, the applicant's pay would have increased by Rs. 480/- and consequently his monthly pension by Rs. 240/-. There is a reduction in his pension by denying the increase of Rs. 240/- due to him. In fact revision due to the implementation of the 6th Pay Commission would only be upwards. It could not be used to correct anomaly if any regarding the grant of increment in the pre-revised pay scale. There was no Head Office instruction in this regard in the case of the applicant. The respondents were totally off the mark in relying on the Head Office instruction contained in letter dated 10.6.2008 in respect of stepping up of pay of one Shri B. Ramesh. It was mandatory on the part of the respondents to have given notice under Rule 70(2) of CCS (Pension) Rules, 1972. Violation of this provision has vitiated the impugned order dated 15.9.2008 at Annexure A9 to the extent it applies to the applicant.

8. Respondents have stated that but for the implementation of the 6th Central Pay Commission recommendations the original pension would have continued as such. Revision due to the 6th Central Pay Commission did not warrant a reduction of pay and pension of the applicant. Under the cover of revision of pay due to the 6th Central Pay Commission the respondents have arbitrarily revised the pay and pension of the applicant to his disadvantage without giving him any notice. The respondents failed to take notice that the reduction of pay or pension amounts to a punishment which cannot be inflicted without following due procedure. The respondents had fixed the pay



of the applicant in accordance with FR 22(1)(a)(2) read with FR 23. The subsequent denial of the benefit of pay fixation under the aforesaid provision by order dated 15.9.2008 is arbitrary and illegal.

9. In the light of the above Annexure A9 order dated 15.9.2008 is quashed. It is declared that the applicant is entitled to the option of fixation of pay as per provisions contained in FR 22(1)(a)(2) and FR 23 and pay fixation already made as per Annexure A2 order dated 9.11.2005. He is entitled to pension under Revised Pay Rules 2010 corresponding to the pension already fixed as given on page 16 of the service book at Annexure A4. He should be refunded the amount of Rs. 7301/- recovered from the arrears of his salary. Other eligible amounts if any should be released immediately. Appropriate orders in this regard and payments due to the applicant should be made within a period of three months from the date of receipt of a copy of this order.

10. Accordingly, the Original Application is allowed as above. No costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

“SA”


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER