

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.207/2012**

Friday , this the 16th day of January, 2015

C O R A M :

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

S.Radhakrishna Pillai
S/o.Late K.Sivarama Pillai
Retd. Senior Chargeman
Naval Ship Repair Yard
Naval Base, Kochi – 682 004
residing at SP 2002,
Koippallil, Satellite Township
Padamugal, Kakkanad
Kochi – 682 030

- Applicant

(By Advocate Mr.M.R Hariraj)

Versus

1. Union of India represented by the
Secretary to Government of India
Ministry of Personnel, Public Grievances
and Pensions, Department of Pension and
Pensioners' Welfare, Lok Nayak Bhawan
New Delhi – 110 003
2. Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat
Allahabad – 211 014
3. Flag Officer, Commanding-in-Chief
Southern Naval Command,
Kochi – 682 004

- Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 27th November, 2014
this Tribunal on 16.01.2015 delivered the following :-

ORDER

BY HON'BLE MR.U SARATHCHANDRAN, JUDICIAL MEMBER

1. The short question to be considered in this amended Original
Application is whether the pensioners who were in receipt of compulsory



retirement pension can be deprived of the benefit of the revision of pension granted to the pre-2006 pensioners, stepping up their pension to 50% of the minimum pay in the pay band plus grade pay as per the VI Central Pay Commission (VI CPC) recommendations, corresponding to the pre-revised pay scale from which the pensioner had retired ?

2. Applicant in this case is a pensioner who was compulsorily retired after putting in 24 years of service is now challenging Annexure A-6 O.M dated 22nd July, 2011 issued by the Department of Pension and Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India. Applicant was compulsorily retired from the service of the 3rd respondent while working as Senior Chargeman.

3. In the counsel statement filed on behalf of the respondents prior to the amendment of the present Original Application, it was stated that applicant who has compulsorily retired from the service of the 3rd respondent on 06.02.2002 is a pre-2006 pensioner and that the pension will be reduced pro-rata for the persons who retired before 01.01.2006 if the pensioner had less than the maximum required qualifying service (33 years) for full pension as per rule 49 of the CCS(Pension) rules 1972. It is further stated that as per Annexure A-6 OM stepping up of pension to 50% of the minimum of the pay in the pay band plus grade pay is not applicable to the pensioners who were in receipt of compulsory retirement pension.

4. In the additional reply statement it is contended by respondents that since the challenge in the Original Application is against Annexure A-6, the Original Application is time barred and hence it is liable to be dismissed on that ground. According to respondents, Annexure A-6 is only a clarification of the



specifications on Annexure A-2 OM and it can by no stretch of imagination be said to be taking away a right. No right has been accrued to the applicant by way of Annexure A-2. It is also submitted that applicability of a scheme is a policy decision of the Government.

5. Heard both sides. Mr.M.R Hariraj, learned counsel for applicant and Mr.Rajesh representing Mr.Sunil Jacob Jose, SCGSC, learned counsel for respondents were heard.

6. Mr.M.R Hariraj relied on the order of the Principal Bench in O.A No.655/10 and connected cases and which had been relied on by this Bench in O.A No.744/11 and O.A No.919/11, which in turn had been upheld by the High Court of Kerala vide common judgement dated 22.05.2014 in OP(CAT) No.1767 of 2012 and connected cases. Annexure A-2 is the O.M dated 01.09.2008 issued by the Department of Pension and Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions, regarding Government of India's decision on implementation of the recommendations of the 6th Pay Commission for revising the pension of pre-2006 pensioners/family pensioners. Para 1 and 2.1 in the aforesaid O.M are extracted below:-

"1. The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, sanction of the President is hereby accorded to the regulation, with effect from 1.1.2006, of pension/family pension of all the pre-2006 pensioners/family pensioners in the manner indicated in the succeeding paragraphs separate orders will be issued in respect of employees who retired/died on or after 1.1.2006.

2.1 These orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) Rules, 1972 CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway pensioners of All India Services, including officers of the Indian Civil Service, retired from service on or after 01.01.1973. "

[Underlining supplied]

7. As stated above, applicant is aggrieved by Annexure A-6. The relevant portions of Annexure A-6 are extracted below:-



" The undersigned is directed say that in accordance with para 4.2 of this Department's O.M No.38/37/08- P&PW(A) dated 1.9.2008, the revised pension of pre-2006 pensioners shall, in no case, 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. In the case of HAG + and above scales, this will be fifty percent of the minimum of the revised pay scale.

2. xxxxxxxxxxxxxxxx

3. It has now been decided that the benefit of para 4.2 of this Department's O.M No.38/37/08-P&PW(A) dated 1.9.2008 (as clarified vide O.M No.38/37/08-P&PW(A)(pt.I) dated 3.10.2008) will not be applicable in the case of revision of pension/family pension in respect of the pensioners who were in receipt of compulsory retirement pension and compassionate allowance under Rules 40 and 41 of CCS(Pension) Rules, 1972. "

[Underlining supplied]

8. The contention of the respondents is that Annexure A-6 O.M declining the benefits of Annexure A-1 revision of pension to the pre-2006 pensioners who were compulsorily retired from service is a policy decision of the Government and the same cannot be challenged. According to the respondents Rule 40 of CCS(Pension) Rules, 1972 empowers the government to reduce and grant pension less than the full pension admissible under the Rules. Rule 40 of CCS (Pension) Rules, 1972 reads as follows:-

"40. **Compulsory retirement pension:**

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the ¹[full compensation pension] admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

EXPLANATION. - In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of ³[Rupees three hundred and seventy-five] per mensem. " [Underlining supplied]



9. In this context it is pertinent to refer to a Government of India's decision under Rule 40 CCS(Pension) Rules, 1972 which explains the guiding principles relating to reduction of pensionary benefits contemplated under Rule 40. Government of India, Ministry of Finance letter no.F.7(22)-E.V/56, dated 3rd June 1957 reads as follows:-

"(1) **Guiding principles for reduction of pensionary benefits under Rule 40(1)**- Rule 40 prescribes the limit for retirement benefits which would be admissible to an officer on whom the penalty of compulsory retirement may be imposed. This form of penalty has been introduced to provide for cases in which the continuance of a Government servant in service is considered to be undesirable but the extreme penalties of removal or dismissal, with the consequent loss of pension, is considered to be too severe.

The intention is that, persons on whom the penalty of compulsory retirement is imposed should ordinarily be granted the full compensation pension and retirement gratuity, admissible on the date of compulsory retirement. Where, however, the circumstances of a particular case so warrant, the authority competent to impose the penalty of compulsory retirement may make such reductions in the pensionary benefits, within the limits prescribed, as it may think appropriate. In the case of a person governed by the New Pension Rules, reduction may be made either in the retirement gratuity or in the pension or in both. "

[underlining supplied]

10. The above extracted Government of India's decision of 1957 read with Rule 40 CCS (Pension) Rules 1972 shows that the intention of the rule makers was not to treat reduction of pension as a necessary concomitant to all cases compulsory retirement. The persons on whom the penalty of compulsory retirement is imposed should be ordinarily granted the full compensation pension and retirement gratuity, admissible on the date of compulsory retirement. However, the authority competent to impose penalty of compulsory retirement may make reductions in the pensionary benefits within the limits prescribed as it may think appropriate. Thus, reduction of pension is not necessarily a concomitant event in all cases of compulsory retirement. A reduction in pension can be made applicable to a compulsorily retired person only if the authority imposing penalty has made it specific in the order imposing penalty. In the instant case, nothing is perceivable from the records produced by both sides



that the order imposing penalty against the applicant contained a provision for reduction of his pension / gratuity.

11. For the reasons stated above, respondents are directed to ignore Annexure A6 and to re-consider the reduction effected to the applicant's pension departing from the Annexure A-2 O.M dated 01.06.2008. The pension of applicant shall be fixed at not less than 50% of the minimum pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the applicant had retired, in the light of the decision of the full bench of the Principal Bench of this Tribunal in OA655/2010 and connected cases. It is further made clear that any reduction from the aforesaid mode of revising the pension of applicant as stated above shall be made only if the order imposing the penalty of compulsory retirement on the applicant contains a direction for reduction of pension. Respondents shall pass necessary orders in the light of the observations made in this order re-fixing the pension of the applicant within three months from the date of receipt of a copy of this order. There will be no order as to costs.


U.SARATHCHANDRAN
JUDICIAL MEMBER

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