

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 349/12

Thursday, this the 31st day of January, 2013

CORAM:

HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

Dr.M.S.N Balasubramaniyan
4/169 Ambala Nagar Extn
Kowdiar P.O
Trivandrum – 695 003

- Applicant

(By Party-in-person)

Versus

1. Union of India
Representing Secretary
Dept of Pension & Pensioners' Welfare
3rd Floor, Lok Nayak Bhavan
Khagan Market
New Delhi – 110 003

2. Secretary
Branch Secretariat
Department of Space
3rd Floor, Lok Nayak Bhavan
New Delhi – 110 003

3. Director
VSSC, Veli
Trivandrum – 695 022

- Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

This application having been heard on 08.1.2013, the Tribunal on 31.01.2013 delivered the following:

ORDER

1. The applicant has filed this Original Application for a direction to the respondents to revise his pension from 07.05.1993 to till date, to add 5 years to his qualifying service for pension, to grant him two additional increments to count towards revision of pension and to allow full pension as 20 years qualifying

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service will suffice for full pension from 01.01.2006 and to admit his claim for medical reimbursement.

2. The applicant was prematurely retired from service under the provision of FR 56(J) with effect from 07.05.1993. He was treated as a beneficiary of Contributory Provident Fund and lumpsum payment was effected accordingly. He filed O.A 454/2001 with a prayer to permit him to exercise his option to switch over to GPF Scheme cum Pension Scheme. The O.A was allowed and consequently the respondents issued pension payment order from 1993. This was duly revised on implementation of the recommendations of 5th CPC and 6th CPC. The applicant avers that his pension was originally fixed by taking into account his qualifying service of 25 1/2 years. According to him, one who opts for retirement on Voluntary Retirement Scheme is given the additional weightage of 5 years of qualifying service. He should have been granted the same but the respondents have rejected his Annexure A-3 representation to the first respondent to that effect. The applicant further contends that with effect from 01.01.2006 consequent upon the implementation of 6 CPC recommendations, the qualifying service needed for full pension is reduced to 20 years. Hence, he should have been granted 50% of the minimum of the pay in the pay band plus grade pay while revising his pension from 01.01.2006. The revised pension should have been Rs.25,050/- while it is fixed as 17,812/- as his qualifying service is for 25 1/2 years. The applicant placed reliance on the order of the Principal Bench, C.A.T New Delhi in O.A 655/10 to show that as a pre-2006 retiree he is entitled for 50% of the minimum of the pay in the pay band plus Grade Pay.

3. The respondents contested the O.A and filed reply statement. They

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took up a preliminary objection that the Original Application is barred by limitation as he is praying for refixation of his pension from 1993. In this regard they placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of C.Jacob versus Director Geology & Mining and another reported in (SLP(C) No.25795 of 2008/CC 11425/2008 (Annexure R-1). They also submitted that the applicant is asking for plural remedies which is not permissible as per the provisions of CAT (Procedure) Rules 1987. During the final hearing of the Original Application the applicant was apprised that plural remedies cannot be sought in the same O.A. Therefore, his prayer for reimbursement of his medical claim is not being considered in this O.A. He is at liberty to file another O.A, if so inclined. However, his refixation of pension right from the beginning can be considered as pension matter gives rise to a recurring cause of action as per the law laid down in the case of M.R.Gupta Vs. UOI, (1995) 5 SCC 628.

4. The respondents submitted that the applicant was retired prematurely under the provisions of FR 56(J) after perusal of his entire records and on being found that he is ineffective to hold the post. However, in compliance of the order of this Tribunal in O.A 454/01, he was permitted to exercise his option for GPF cum Pension Scheme from Contributory Pension Scheme and necessary PPO was issued for payment of pension from 1993. They submitted that his pension was rightly fixed, as per his entitlement and in accordance with the rules on the subject. Adverting to the claim of the applicant for addition of 5 years of qualifying service for the purpose of pension, as in the case of voluntary retirement, the respondents submitted that voluntary retirement is governed by Rule 48(b) of CCS Pension Rules 1972. The applicant who was weeded out



under the provisions of FR 56(J) cannot claim for the privileges given to those who opt for Voluntary Retirement Scheme.

5. Regarding his request for sanctioning additional two increments for pay fixation and consequent revision of pension, the respondents submitted that with an objective of attracting, retaining and motivating the Scientists and Engineers to give their best contribution, an incentive scheme culminating in two increments was introduced vide Annexure R3 & R4 by O.M dated 03.02.1999 and 12.08.1999 respectively. However, retrospective effect was granted from 1.1.1996. The respondents submitted that the applicant was not in service with effect from 07.05.1993 and hence he was not eligible for two increments introduced with effect from 01.01.1996.

6. The respondents submitted that as per O.M F.No.38/37/08-P&PW(A) dated 01.09.2008 issued by the Department of Pension & Pension Welfare, the pension of all pre-2006 pensioners was consolidated with effect from 1.1.2006 by adding together:

- i. The then existing pension/family pension
- ii. Dearness pension, where applicable
- iii. 24% of Basic Pension/Basic family pension plus dearness pension
- iv. Fitment weightage @ 40% of the existing pension/family pension (excluding merger of DR of 50%).

Hence the pay of the applicant was revised and refixed in pay band IV of Rs.37400-6700 with Grade Pay Rs.8700/- 50% of minimum of Pay Band + G.P, at Rs.25050 was reduced to Rs.17,812/-, taking into account his qualifying



service as 25 ½ years. The respondents submitted that the pension so fixed is subject to the provision that the revised pension of those who retired after completing the maximum required qualifying service (i.e. 33 years) before 01.01.2006 cannot be less than 50% of the sum of minimum of the pay in the Pay Band and the Grade Pay, corresponding to the pre-revised pay scale from which the pensioner had retired. The pension will be reduced pro-rata, wherever the pensioner had less than the maximum required qualifying service (i.e. 33 years) for full pension as per Rule 49 of CCS (Pension) Rules, 1972. According to the respondents, the averment of the applicant that he is similarly situated as the applicants in O.A 655/10, the respondents submitted that the government has filed WP No.1535/12 before the Hon'ble High Court of New Delhi which is pending for disposal. They further stated that they have not received any orders for refixation of the pension of pre-2006 pensioners from R1. The respondents further stated that the applicant is not entitled for the reduced qualifying service of 20 years for full pension which was brought into effect only from 1.1.2006 for those who retired on or after 1.1.2006. The applicant's entitlement for pension is governed by Rule 49 of CCS Pension Rules 1972 which is based on the condition of 33 years of qualifying service to avail full pension. The applicant has only 25 ½ years of qualifying service and hence his pension was fixed taking into account his eligible qualifying service.

7. The applicant filed rejoinder reiterating almost the same contentions.

8. The respondents filed additional reply statement to the rejoinder.

9. Arguments were heard and records perused.

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10. The applicant's main relief centres around refixation of pension consequent on the recommendation of 6th CPC. According to him, he is entitled to 50% of the minimum of the pay in the pay band plus grade pay even though he does not have 33 years of qualifying service at his credit at the time of his premature retirement. He further states that he is similarly situated like the applicants in O.A 655/10 filed before the Principal Bench of CAT, New Delhi. The facts in O.A 655/10 shows that pre-2006 pensioners who were placed in the pay scales of S 24 to 27 and S 29, as per 6th CPC, were agitating for higher pay band fixed by the government. 6th CPC has recommended pay band III of Rs.15600-39100 with a Grade Pay Rs.7600/- for those drawing the 5th CPC scale of S 24 to S 27. However, the government has upgraded the said category to Pay Band IV and placed them in the pay band Rs.37400-.67000 plus grade pay of Rs.8700/- per month. Similarly in the case of employees who were placed in S 29 scale were granted pay band of Rs.37400-67000 plus G.P of Rs.10000 per month by the government. While the serving employees were fixed in the enhanced pay band approved by the government. pre 2006 pensioners were not extended the same benefit. In the case of the applicant his pay was fixed in S-24 pay scale of Rs.14300-400-18300 as per 5th CPC recommendations and revised PPO issued accordingly. As stated supra, 6th CPC has recommended the Pay Band III of Rs.15600-39100 with a grade pay of Rs.7600/- for those drawing the 5th CPC scale of S-24 to S-27. The respondents in tune with the upgradation of the pay band from P.B III to P.B IV for the holders of S-24 to S-27 scales, by the government fixed the pay of the applicant correctly in P.B IV with a grade pay of Rs.8700/-. As such, the applicant has benefitted from the order in O.A 655/10. However, the issue of fixing 33 years of service for pre 2006 pensioners was dealt with in the order. The relevant paras are



extracted below:-

“ 8. If the matter is seen in the light of the law laid down by the Apex Court, as noticed above, (in the case of DS Nakara Vs Union of India (1983) 1 SCC 305, Col BJ Akkara (retd) Vs. Government of India 2006 11 SCC 709, GOI vs Dr. Vijayapurapu Subbayamma (2000) 7 SCC 662). it cannot be said that fixation of cut off date of 1.1.2006 for the purpose of extending retiral benefits is arbitrary and it is permissible for the Government to fix a cut off date for introducing any new pension/retirement scheme or for discontinuing of any existing scheme. Thus, the challenge made by the applicants based upon the judgment in D.S Nakara (supra) that pre-2006 retirees should be extended the same pensionary benefits as that of post 2006 retirees cannot be accepted.

9. Yet for another reason, pre-1.1.2006 retirees and post-2006 retirees cannot be extended the same pensionary benefits in as much as the respondents on the basis of the recommendations of the VI CPC have issued two different Schemes for pre-2006 and post-2006 retirees. As regards, post-2006 retirees respondents have issued OM dated 2.9.2008 (Annexure R-1) as to how the pension has to be computed. As can be seen from this scheme, emoluments have to be computed on the basis of the revised pay structure and further as can be seen from paras 5.2 and 5.3 of the said OM qualifying service for the purpose of pension has been reckoned as 20 years as against 33 years, which was prevalent in respect of the employees who retired before 1.1.2006 and also that emoluments for the purpose of pensionary benefits have to be determined on the basis of 10 months average emoluments or emoluments last drawn by the employee before his retirement, whichever is more beneficial. Applicants have not challenged the validity of the OM dated 2.9.2008. As such, on these grounds pre-2006 retirees cannot claim benefit at par with post -2006 retirees, who are governed by the separate set of Scheme. “

The observations as contained in para 8 and 9 of the order of Principal Bench Supra show clearly that the prevalent condition to be fulfilled for full pension as per Rule 49(b) of 1972 pension Rules is to be applied to the applicant as he is a pre 01.01.2006 retirees. “ Para 5.4 of O.M No.F.No.38/37/08-P&PW(A) dated 02.09.2008, clarifying the position is extracted below:-

para 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 O.M and shall be applicable to

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Government servants retiring on or after that date. The government servants who have retired on or after 01.01.2006 but before the date of issue of this O.M will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders. "

11. It is seen that the respondents have issued his PPO at Annexure A-5 in the manner laid down in O.M dated 02.09.2008 supra. The same is not challenged by the applicant. The applicant's pension could have been fixed as 50% of last pay drawn at Rs.23,050/- had he put in 33 years of service at the time of his retirement which was prior to 01.01.2006. However, he will be entitled to benefits, if any, conferred on pre-2006 pensioners based on the outcome of W.P No.1535/12 before the Hon'ble High Court of New Delhi.

12. I find force in the contention of the respondents that Rule 48(b) which governs Voluntary Retirement is not applicable to the applicant who was retired prematurely under the provision of FR 56(J) and that the revised PPO consequent on VI CPC recommendation is issued in accordance with law. The applicant has produced a copy of Annexure A-8 which is a communication from ISRO Senior Citizen Forum regarding entitlement of additional two increments based on the judgment of the Hon'ble High Court of Kerala. The respondents have taken up the contention that the applicant is not entitled for the same as he was not in service as on 01.01.1996 and the Government order did not specify that it is applicable to those who retired prior to 01.01.1996. Since a copy of the judgment is not produced by the parties, the applicant is at liberty to send a representation to the Director VSSC if he is similarly situated like the applicants in the WP before the Hon'ble High Court of Kerala. On receipt of the representation the Director, VSSC will consider the same, take an appropriate decision and intimate the same to the applicant.



13. In view of the foregoing, the Original Application is disposed of with the above directions. No costs.

(Dated, the 31st day of January, 2013)



K NOORJEHAN
ADMINISTRATIVE MEMBER

SV

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) 122 OF 2012 IN O.A. NO. 349 OF 2012

Tuesday, this the 26th day of November, 2013

CORAM:

**HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Dr.MSN Balasubramaniyan
4/169 Ambala Nagar Extension
Kowdalar PO
Trivanbdrum – 695 003

Petitioner

(By Advocate Mr.TCG Swamy)

versus

1. Government of India representing Secretary
Department of Pension & Pensioner's Welfare
3rd Floor, Lak Nayak Bhavan
Khan Market
New Delhi – 110 003 represented by Shri Harjit Singh

2. Secretary
Branch Secretariat, Department of Space, 3rd Floor
Lok Nayak Bhavan, New Delhi – 110 003
represented by Dr.K.Radhakrishnan

3. Director
VSSC, Veli
Trivandrum – 695 022
represented by Mr.S.Ramakrishnan

Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 26.11.2013, the Tribunal
on the same day delivered the following:

ORDER

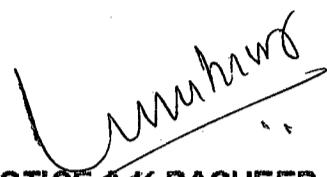
HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

When this Contempt Petition (Civil) is taken for consideration, Mr.TCG
Swamy who appears for the petitioner submits that it may be closed with liberty to
the petitioner to pursue the remedy available to him in accordance with law, if he
is aggrieved by the order passed by the respondents in compliance of the
direction issued in the above Original Application.

2. Contempt Petition (Civil) is closed in the above terms.

Dated, the 26th November, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE A.K.BASHEER
JUDICIAL MEMBER

VS