

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 406/2004

WEDNESDAY THIS THE 3rd DAY OF JANUARY, 2007.

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

- 1 M Ramachandran S/o late V.K. Ramanuni Nelanjan
Retd. Sperintendent, Small Industries
Service Institute, Gulbarg
Kottapuram, Thrissur-680 004
Ragamalikapuram, Kottapuram,
Thrissur-680 004
- 2 Mrs. Thankam Ramachandran
W/o M. Ramachandran (late)
Ragamalikapuram, Kottapuram,
Thrissur-680 004
- 3 Renuka Ramachandran
D/o M. Ramachandran (late)
Ragamalikapuram, Kottapuram,
Thrissur-680 004

By Advocate Mr. P.V. Mohanan

Vs.

- 1 Union of India
represented by Additional Secretary
Department of Pension & Pensioners' Welfare
Ministry of Personnel, Public Grievance & Pension
Lok Nayak Bhavan,
New Delhi.
- 2 Pay and Accounts Officer
Central Pension Accounting Officer
Ministry of Finance,
Gouvernement of India
Trikoort Complex
Behind Hotel Hyat Regency,
Bhikajo Cama Place
New Delhi-110 066

- 3 The Pay and Accounts Officer
Ministry of Industry
Small Scale Industries
65/1, GST Road,
Guindy, Chennai-600 032
- 4 The Director
Small Industries Services Institute
Hubli
- 5 The Manager
State Bank of India
Main Branch, Thrissur.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1-4
Advocate Mr. T.C. Krishna for R-5

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The 1st applicant is a retired Office Superintendent who retired voluntarily from the Small Industries Service Institute, Gulbarga and he has sought the following reliefs in this OA:-

- (1) To call for the records leading to Annexure A-1, A-2 and A-3 and to set aside the same
- (2) To declare that the applicant is eligible to be treated as pre-1986 pensioner retired from central government service and eligible to have his pension refixed with effect from 1.1.1996 by reckoning his scale of pay as Rs 5500-9000/- contained in Part B of revised pay rule, and to disburse the pensionary benefits with arrears and with interest at the rate of 18% per annum from 1.1.1996 till the date of payment.
- (3) To declare that the recovery proceedings initiated pursuant to Annexure A-3 from the monthly pension is illegal.
- (4) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in interest of justice.

2 The applicant is thus mainly aggrieved by the Annexure A-1, A-2, and A-3 proceedings refixing his pay taking into account the scale of pay Rs. 5000-8000 and recovery of allegedly excess payments made towards his pension on monthly basis by the fifth respondent.


3.1 The 1st applicant has put forth the following contentions:-

When the applicant voluntarily retired on 6.3.1986, the 4th Central Pay Commission scale of pay was not implemented. Thus the terminal benefits were fixed based on the scale of pay prescribed for the 3rd Central Pay Commission. The 1st respondent by OM dated 02.01.87 PIC II dated 14.4.87 allowed employees who had retired during the period from 1.1.86 to 30.6.87 an option to retain pre revised scale of 3rd pay commission and to have their pension recalculated under the rules in force prior to 1.1.86. The applicant was treated as a pre-1986 pensioner. The Fifth Pay Commission's recommendations were implemented at a later date with effect from 1.1.1996 and the Government granted pre 1986 pensioners some financial benefits as contained in paragraph 2 of OM dated 10.2.1998 by consolidation of pension. (Annexure A-5.) Personal pension granted to them was to be discontinued with effect from 1.1.1996.


3.2 As envisaged in letter No PAO/SSI/MAS/PEM/REV dated 17.6.1998, the applicant applied for revision of his pension from 1.1.1996 as pre-1986 pensioner on 28.1.1999 before the 3rd

respondent. Annexure A-6 OM dated 27.10.1997 made it clear that personal pension would be discontinued only after consolidation is done. Thus the applicant was entitled to fixation of his pension at Rs 2807/ with effect from 1.1.1996, but the 3rd and 4th respondents had lost sight of this provision and other Departments like Railways and Telecom have implemented the A5 And A6 orders giving the benefit to pre 1986 pensioners. The applicant's representations were not considered, instead the pension was scaled down and recovery was initiated against which he had filed OP No 36362/2002 before the Hon'ble High Court of Kerala which directed the respondents to consider the representation of the applicant. But Annexure A1 order has been issued scaling down the pension which is submitted as unjust and arbitrary. The post of Superintendent had in the meanwhile been red-esignated as Office Superintendent in the revised scale of Rs 5500-9000 and hence it is contended also that the terminal benefits have to be computed taking note of the above scale of pay with effect from 1.1.1996.

4 Per contra, the respondents have stated that the applicant had voluntarily retired from service from the post of office superintendent of the Institute on 6.3.1986 having completed 32 years, 1 month and 15 days of qualifying service. The 4th Pay Commission Recommendations had not been completed by that time. Therefore his pension was fixed at Rs. 725/- plus personal pension of Rs 138/-. As per his option dated 2.3.87 the applicant had opted for



the revised scale of pay that became effective from 1.1.1986. and the applicant was placed in the revised scale of Rs 1600-2660 and was paid the difference in salary and his pension was protected at the rate already fixed in terms of the instructions dated 14.4.1987. According to the respondents, the applicant is a post 1986 retiree and having drawn post 1986 scale, the question of notionally fixing his pay as on 1.1.1986 calculating pension thereof and consolidating the same as on 1.1.1996 does not arise and his request has been correctly rejected. The pension in the upgraded scale of Rs 5500-9000 is eligible only for those who have retired on or after 1.1.1996. They have reiterated that the applicant is not a pre 1986 pensioner as he is a post 1986 retiree and as such the provisions contained in the Department of Pensions & Pension Welfare OM dated 10.2.1998 are not applicable to him. The applicant cannot rely on the circular of the Railway board as it is not relevant to him as it is applicable to those employees who had their retirement benefits settled in terms of the pre revised scale though retired after 1.1.1986. The applicant had opted as per Annexure A1 letter dated 28.2.1987 for the revised scale of pay i.e. 1660-2660, thereafter as per Annexure A-2 letter dated 25.6.1987 the applicant had withdrawn his option to come over to the new pay scale and wished to continue in the pre revised scale to draw pension already sanctioned to him. But in Annexure A-3 letter the applicant changed his option and stated that he withdraws his letter dated 25.6.1987. Therefore his contention that he had withdrawn the original option is not correct and misleading.



The normal replacement scale for the pre-revised scale of pay of Rs 1600-2660 w.e.f 1.1.1996 is Rs 5000-8000 and the upgraded scale of Rs 5500-9000 is only for those who were in service on or after 1.1.1996. Since the applicant had retired on 6.3.1986, the refixation of pension w.e.f. 1.1.96 in the scale of Rs 5000-8000 is correct, say the respondents. Further they have submitted that the refixation has been done with the approval of the nodal department after meeting the statutory requirements of Rule 70 of the CCS Pension Rules 1972 and the applicant has been given due opportunity to lodge his objections and it cannot be treated as a measure of penalty.

5 The applicant has filed a rejoinder denying the contentions raised in the reply statement. It is submitted by the applicant that the Director, the 4th respondent had forced the applicant to withdraw his letter dated 25.6.1987 through his letter dated 20.4.1998 and thus a grave injustice has been done to him. He has also contended that the Department of Pensions OM No 45/1/116/97 P and PW (A) dated 11.5.2001 has been annulled by the Hon High court of Delhi in W.P 678 dated 9.12.2003. and that the Bank has unilaterally recovered the personal pension amount beyond 1.1.1996 whereas it should have been adjusted from the arrears after revision of his pension.

6 The respondents filed a further reply denying there was any coercion exercised on the applicant, and that the OM dated

11.5.2001 has been declared to be an integral part of the OM dated 17.12.1998 by the Hon'ble High Court of Madras in the case of DG AIR Vs Krishna Swamy & others.

7 I heard the Learned counsel Sri P.V. Mohanan for the applicants and SCGSC for the respondents and perused the records and considered the detailed argument notes submitted by the counsel for the applicant.

8 The claim of the applicant for revision of pension hinges round the question whether he can be considered as a pre 1986 pensioner, having retired on 6.3.1986. The Learned counsel for the applicant has put forth his arguments on this point on the following lines:-

Since the applicant retired before the implementation of the IVth Pay Commission recommendations, his pension was fixed at Rs 725/- with reference to the pre-revised scales + personal pension of Rs138 /and family pension of Rs 450/-. He was later placed in the revised scale of Rs1600-2660 w.e.f. 1.1.1986 and pay notionally fixed at Rs 1850/- and pension at 50% of the same at Rs 925/-, and the personal pension continued as a separate element. The Government by OM No 02.01.1987 PIC II dated 14.4.1987 allowed employees who had retired during the period from 1.1.1986 to 30.06.1987 an option to retain the pre-revised scale of pay of 3rd Pay Commission and to have their pension recalculated under the Rules

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in force prior to 1.1.1986 in accordance with which the applicant had opted for pre 1986 rule in the matter of pension by which he can draw personal pension as a separate element.

After implementation of the Vth Pay Commission recommendations, the Government issued OM No45/86/97-P&PW Par-II dated 27.10.97 which regulated the pension /family pension of all pre-1996 pensioners. Clause 4.1 states that the pension /family pension of all existing pre 1996 pensioners will be consolidated with effect from 1.1.1996 by adding together existing Pension/FP, DA,IR etc. The consolidated pension thus worked out shall be treated as final basic pension w.e.f. 1.1.1996 and shall qualify for grant of DA in respect of pensioners who retired between the period from 1.1.1986 to 31.12.1995.

The above OM no 45/86 dated 10.2.1998 clarified OM dated 27.10.1997 by which Government accepted that the pension of all the pre1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for serving employees and thereafter for consolidation of their pension as on 1/1/1986, they may be treated alike to those who have retired on or after 1.1.1986.

OM No 45/10/98-P and PW (A) dated 17.12.1998 ordered that 'the pension of all pensioners irrespective of their retirement shall not

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be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner'. The above OM was clarified by OM No. 45/86/97 dated 11.5.2001 that " pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioner at the time of superannuation."

10 The respondents accept the factual matrix of the OMs as detailed above and their applicability in respect of pensioners as contended by the applicant except that of the OM dated 11.5.2001 which I shall refer to later on. As regards their applicability to the revision of the applicant's pension, their contention is that the applicant having retired on 6.3.1986 and opted for revised scale with effect from 1.1.86, he cannot be treated as a pre1986 pensioner and a pre 1986 pensioner is one who has opted for pay and retirement benefits on pre revised scales or those who were in receipt of pension prior to 1.1.1986 and the applicant does not belong to either category. This argument is evidently a flawed one as it does not take into account the fact that an opportunity was given to the employees who had retired during 1.1.1986 to 30.6.1987 to retain the pre-revised scale of the 3rd pay commission and to have their pension calculated under the rule in force prior to 1.1.1986 by OM dated 14.4.1987. Accordingly the applicant had opted for the pre 1986 scales. Here, the respondents have admitted that the

applicant did opt for the pre revised scale as contended but later withdrew the same and the applicant has rebutted this pointing out that he was coerced into doing so by the Director and the Counsel has drawn our attention to the copy of the letter produced by the respondents on the direction of the court to prove his point. This controversy has to be therefore settled as it is the crucial point to determine whether the applicant is a pre 1986 pensioner or not.

11. As per the directions of the Tribunal, the following documents were produced by the respondents as Annexures MA-2 to 7 of which the following are relevant to this controversy.

- 1 Letter No Nil dated 28.2.1987
- 2 Letter dated 25.6.1987
- 3 Letter dated 20.4.98 sent to the applicant
- 4 Letter dated 28.4.98 sent by the applicant to the Director changing his option.

12 A reading of the above Letters would show that the first Letter is the option given by the applicant to come to the 4th pay commission scales as they came into effect after his retirement on 6.3. 1986. He was then drawing his pension as per the 3rd Pay commission scales. The second letter was obviously given in the wake of the OM dated 14.4.87 which permitted such retirees to give a revised option. Without seemingly acting on it for some time the respondents have issued the 3rd letter referring to an earlier reference made to the applicant in a letter dated 1.7.87 and the

contents of which reproduced below would prove the contention of the applicant that he was forced to change his mind to withdraw his earlier change of option. The relevant part of the letter reads thus-

"But so far we have not heard anything from you as regards opting for the new pay scale. As you would be entitled for all the benefits as per our letter of even number dated 19.6.1987 by opting for the new pay scale which you have withdrawn vide your letter dated 25.6.87, you are requested to write us intimating that you have withdrawn your letter dated 25.6.1987 and that your option already executed for coming over to the revised pay scale hold good.

Yours faithfully

Sd/-

BS Govinda Rao
Director

13 The respondents had no business to write such a letter to the applicant placing him under the illusion that he would not be in a disadvantaged position and advising him to withdraw his letter changing his option. The statement of the respondents that the applicant will not be in a disadvantaged position has been proved wrong as they have now reduced his pension and ordered recovery. They are now singing a different tune that he is not entitled to the further benefits conferred upon such pensioners in the wake of the 5th pay commission. The respondents could not have foreseen the future policies of the Government with reference to the pensioners and therefore should have refrained from giving misleading advice to the employees. It is the prerogative of the pensioner to decide what is the course of action to be adopted when an option is allowed to him and it is for the pensioner to weigh the pros and cons of the

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options and choose whatever is beneficial to him according to his assessment and then he has to willingly subject himself to any changes favourable/unfavourable which may be effected in future in the policies of the govt. The respondent departments are not to offer any unsolicited advice in such matters. In this case it is unfortunate that the petitioner had to pursue his case for years and ultimately he passed away from this world without a settlement being arrived at and the legal heirs are now pursuing the matter. Though the Government extended all the benefits granted to the subsequent retirees to the pre 1986 retirees and liberalized the Rules to enable them to derive the benefits, the irresponsible, obstinate and routine attitude of the respondents have deprived the applicant of his due. It is deplorable that the respondents should have treated their own employee in such a shabby manner. I have no hesitation in upholding the contention of the applicant that the MA5 Letter dated 28.4.1988 of the applicant withdrawing his letter dated 25.6.87 to retain the pre revised scale of pay was given under the influence of the 4th respondent and therefore should not be taken into account as a voluntary act of the applicant. Hence his earlier letter dated 25.6.87 should be taken as the option duly exercised.

14 If that be so, the 1st applicant would have to be considered as a pre-1986 pensioner and his pension/family pension regulated in accordance with the OMs at Annexures A5 and A6 and subsequent OMs delineating the 50% formula dated 27.10 1997 and the

clarificatory OM dated 10.2.1998. Regarding the clarification in OM dated 10.2.1998, the respondents have relied on the judgement of the Hon High Court of Madras in W.P No 24444 to 24451 of 2001 holding that it is an integral part of the earlier OM dated 17.12.1998 and the applicant has relied on the judgement of the Hon High Court of Calcutta in W.P.No 678/2003 setting aside the clarificatory order dated 11s.2001. The respondents will have to decide this aspect of the issue on the basis of the latest rulings of the courts and in consultation with the nodal Ministry of Pensions & Pension Welfare.

15 In the light of the above discussions, the 1st applicant is declared to be eligible to be treated as a pre-1986 pensioner. He is eligible to have his pension refixed on that status with effect from 1.1.1996 in accordance with the OMs referred to above and the pensionary benefits with arrears and with interest at the rate of 18% per annum from 1.1.1996 till the date of payment shall be paid to the applicant within three months from the date of this order.

20 Annexures A-1, A-2, and A-3 are set aside. OA is allowed.

Dated 3.1.2007


SATHI NAIR
VICE CHAIRMAN