

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 460 of 2011

This, the 13th day of December, 2013.

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Bhupendra Singh Gaharwar, aged about 74 years, son of Late Tribhuwan Singh, resident of D-1125, Indira Nagar, Lucknow.

Applicant.

By Advocate: In Person.

Versus

1. Union of India through the Secretary, Ministry of Defence New Delhi.
2. The Secretary, Government of India, Ministry of Personnel Public Grievances and Pension, Department of Pension and Pensioners Welfare, Lok Nayak Bhawan, New Delhi-3.
3. Engineer-in-Chief, Military Engineering Services, E-in-C's Branch, Army Headquarter, Kashmir House, New Delhi-1.
4. Chief Engineer, Central Command, Lucknow, MG Marg, Lucknow.
5. Chief Engineer, Lucknow Zone, Hospital Road, Cantt. Lucknow.
6. Senior account Officer, PCDA (P), 4 Kachary Road, Allahabad.
7. Manager, State Bank of India, Indira Nagar Branch Lucknow.
8. Garrison Engineer GEMES, Kanpur.

Respondents

By Advocate Sri R.Mishra.

(Reserved On 18.10.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (i) to quash the orders contained in Annexure No. 1 dated 26.4.2011
- (ii) to issue a direction to pay arrears of salary w.e.f. 1.8.91 to 31.5.95.
- (iii) to issue a direction to revise the pension due on 1.8.96 from Rs. 5210 to 5271 and pay arrears.
- (iv) To issue a direction to revise the pension on 1.1.2006 from Rs. 11,775 to 20.857 and pay arrears.
- (v) To issue a direction to pay compound interest at the rate of 10% PA towards the arrears of salary and pension.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization in 1961 and subsequently, he was promoted as

B/R-1 equivalent to SA-1 on 17.2.1971. Thereafter, he was further promoted as Junior Surveyor of Works in the year 1991. After attaining the age of superannuation, the applicant superannuated on 31.7.1996 from the office of Garrison Engineer, Kanpur and at the time of retirement, the applicant was drawing basic pay of Rs. 10500/- + 4% interim relief per month in the pay scale of Rs. 6500-200-10500/- The applicant, who is appearing in person and has also pointed out that he has claimed re-fixation of pension in pursuance of office Memorandum dated 1.9.2008 read with resolution dated 29.8.2008 and the claim of the applicant was rejected in a most illegal and arbitrary manner which is also contrary to the statutory provisions and revised scheme of pension issued by the Government of India. The applicant has also claimed the benefit of the OM dated 28.1.2013 and has also prayed for further stepping up of 50% as per the directions of the Hon'ble Delhi High Court.

3. The learned counsel appearing on behalf of the respondents has filed their reply and through reply, it was pointed out by the respondents that the revised pension has been fixed by the concerned authorities and the ten months emoluments have been calculated @ Rs. 5,210/- per month w.e.f. 1.8.1996. Apart from this, it is also pointed out by the respondents that the pension of the applicant has been fixed by the P.D.A. in the following manner:-

(a)	Existing Basic Pension (including commuted portion) excluding the effect of merger of 50% of dearness relief)	5210/-
(b)	Dearness Pension @ 50%	2605/-
(c)	Dearness Relief @ 24 % (Basic Pension + D.P. x 24%)	1876/-
(d)	40% of the Basic Pension	2084/-
(e)	Consolidated Pension (a+b+c+d)	11775/-

Not only this, learned counsel for the respondents argued that the applicant has calculated his pension @ Rs.9690/- per month w.e.f. 1.1.2006 by adding 50% Dearness Pension and 24% Dearness Relief on basic pension of Rs. 5210/- and wants this amount to be treated his basic pension which is incorrect and cannot be accepted. The learned counsel appearing on behalf of the respondents vehemently argued that the pension of the applicant has been

correctly revised w.e.f 1.1.2006 as Rs. 11775/- and proper intimation has been forwarded to the applicant as well.

4. The applicant though filed the rejoinder to the reply filed by the respondents and also filed the supplementary affidavit and has also pointed out that as the applicant is pre-2006 retiree and fixation of pension of the applicant has been wrongly been calculated and has also reiterated their averments made in the O.A.

5. Heard the learned counsel for the parties and perused the pleadings on record.

6. Admittedly, the applicant was initially appointed in the respondents organization and he was subsequently superannuated on 31.7.1996 after attaining the age of superannuation. The grievance of the applicant is only to the extent that his pension has wrongly been calculated by the respondents. It is pointed out by the learned counsel for the applicant that at the time of retirement, the applicant was drawing basic pay of Rs. 10,500/- +4% interim relief i.e. Rs. 10920/- per month in the pay scale of Rs. 6500-200-10500 in the 6th Pay Commission and after retirement of the applicant from the services, the respondents have fixed pension of the applicant @ Rs. 5210/- per month instead of fixing @ Rs. 5271 per month. However, the respondents fail to give any details about fixing the said pension. It is also to be mentioned that after implementation of the recommendation of the 6th CPC the pension of the applicant was again re-fixed @ Rs. 11,775/- per month by means of PPO dated 12.7.2010. the applicant though submitted that since the applicant is pre-2006 retiree, and as per the office Memorandum dated 1.9.2008, the pension of the applicant should have been fixed @ Rs. 20857/- per month after implementation of the recommendation of the 6th Central Pay Commission w.e.f 1.1.2006. the applicant has also relied upon O.M. dated 1st September, 2008 regarding implementation of Government Decision on the recommendation of the 6th Pay Commission revision of pension of pre-2006 /pensioners/family pensioners etc. The relevant provisions has been emphasized by the applicant are as under:-

“3.1 In these orders:-

a. Existing pensioner or Existing Family pensioner means a pensioner who was drawing/entitled to pension/family pension on 31.12.2005

b. Existing pension means the basic pension inclusive of commuted portion, if any, due on 31.12.2005. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway Employees and Members of All India Services.

c. Existing family pension means the basic family pension drawn on 31.12.2005 under the CCS (Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-

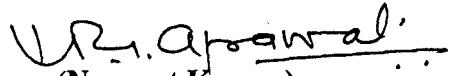
- (i) The existing pension/family pension.**
- (ii) Dearness Pension, where applicable.**
- (iii) Dearness Relief upto AICPI (IW) average Index 5536 (Base Year 1982-1000) i.e. @ 24% of Basic Pension/ Basic family pension as admissible vide this Department's O.M. No. 42/2/2006-P&PW(G) dated 5.4.2006.**
- (iv) Fitment weightage @ 40% of the existing pension/family pension.**

4.7. Since the consolidated pension/family pension arrived at as per paragraph 4.1 includes dearness relief upto average index level 536 (Base year 1982=100), dearness relief will be admissible thereon only beyond index average 536 (Base year 1982=100) in accordance with the revised scheme of dearness relief for which orders are being issued separately. The four installments of dearness relief sanctioned earlier from 1.7.2006, 1.1.2007, 1.7.2007 and 11.2008 in this Department's Office Memorandum No. 42/2/2006-P&PW(G) dated the 15.9.2006, Office Memorandum No. 42/2/2006-P&PW(G) dated the 23..3.2007, Office Memorandum No. 42/2/2006-P&PW(G) dated the 18.9.2007 and office memorandum No. 42/2/2006-P&PW(G) dated the 19.3.2008 respectively shall be adjusted against revised Dearness Relief becoming due on the consolidated pension/family pension.”

7. The applicant who is appearing in person has also relied upon two decisions. One passed by the Full Bench of Tribunal where the bunch of OAs were decided and also relied upon the decision of the Hon'ble High Court in a bunch of Writ Petitions. The Tribunal while deciding the issue has taken the contentions of those pre-2006 retirees who are claiming pension at par with pre 2006 retirees on the recommendation of the 6th Central Pay Commission which became effective w.e.f 1.1.2006. The learned counsel for the applicant submits that as per the 6th Central Pay Commission, the applicant is entitled for

the revision of his pension and to substantiate his arguments, reliance has been placed on the judgment of the Hon'ble Apex Court in the case of **D. S. Nakara and Others Vs. Union of India reported in 1983 (1) SCC 305** and in the case of **Union of India and Another Vs. SPS Vains (Retd.) and Others reported in 2008 (9) SCC 125**. While deciding the OAs, the Tribunal directed the respondents to re-fix the pension of all pre- 2006 retirees w.e.f. 1.1.2006 based on the resolution dated 29.8.2008 as well the observations made in the OAs. The Hon'ble High Court has also dismissed the writ petitions preferred by the Union of India. Though the respondents have taken this ground in their reply, that the basic pension of applicant was fixed as 5210/- and the same was subsequently revised to Rs. 11775/- after the 6th Central Pay Commission w.e.f. 1.1.1996 but it requires reconsideration by the respondents.

8. Accordingly, the O.A. is allowed. The impugned order dated 26.4.2011 is quashed. the respondents are directed to give a comprehensive personal hearing to the applicant and pass the fresh orders in accordance with the observations made by the full Bench of this Tribunal. No order as to costs.


(Navneet Kumar)
Member (J)

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