

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>18.03.2009</u></p> <p><u>OA No. 19/2009</u></p> <p>Mr. Prahlad Singh, Counsel for applicant.</p> <p>On the request of the learned counsel for the applicant, let the matter be listed on 01.04.2009 on which date no further adjournment will be granted.</p> <div><div>(B.L. KHATRI) MEMBER (A)</div><div>(M.L. CHAUHAN) MEMBER (J)</div></div> <p>AHQ</p> <p><u>1-4-2009</u></p> <p>Mr. Prahlad Singh, Counsel for applicant.</p> <p>Heard learned Counsel for the applicant.</p> <p>For the reasons dictated separately, the</p> <p>OA is dismissed.</p> <div><div>(B.L. KHATRI) M (A)</div><div>(M.L. CHAUHAN) M (J)</div></div>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 01st day of April, 2009

ORIGINAL APPLICATION NO. 19/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Mahipat Raj Mehta son of Late Shri Amrit Raj Mehta, aged 83 years,
resident of Bapna Flats, Hira Bagh, Sawai Ram Singh Road, Jaipur.

.....APPLICANT

(By Advocate: Mr. Prahlad Singh)

VERSUS

1. Union of India through Chairman, Railway Board, Ministry of Railways, New Delhi.
2. General Manager, North Railway, Baroda House, New Delhi.

.....RESPONDENT

(By Advocate: -----)

ORDER (ORAL)

PER HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (a) By an appropriate order or direction the order dated 2.7.2008 (Annexure A/1) issued by the respondent no. 1 may kindly be declared illegal and same may be quashed and set aside and it may be held that the applicant is entitled for revision of his pension w.e.f. 1.1.1996 corresponding to the grade of 22400-24500 and subsequent appropriate further revision w.e.f. 1.1.2006 in terms of the Sixth Pay Commission recommendations.
- (b) appropriate orders in this regard may be passed and the respondents may be directed to revise the pension of the applicant accordingly as above and they may further be directed to make fixation of the applicant's pension in the revised grades from 1.1.1996 and 1.1.2006 and pay him the arrears throughout with interest @ 18% p.a.
- (c) pass any other orders as may be deemed just and proper the facts and circumstances of the case including award of cost of this original application."

2. Briefly stated, facts of the case are that the applicant while working as Chief Engineer (Construction) was superannuated on 30.09.1983. At the time of his retirement, the applicant was in the grade of Rs.2500-2750/-. Pursuant to the revision of pay scale w.e.f. 1.1.1996 on account of 5th Pay Commission, the applicant was allowed pension in the corresponding pay scale of Rs.18400-22400/-. The grievance of the applicant is that he should be allowed revised pension w.e.f. 1.1.1996 corresponding to the grade of Rs.22400-24500 by extending the benefit of Railway Board's letter dated 09.09.1999. The applicant made a representation dated 08.03.2008 (Annexure A/7) but the same has been rejected by the respondents vide impugned order dated 02.07.2008 (Annexure A/1) on the ground that in view of judgement rendered by the Apex Court in the case of K.S. Krishnaswamy and other vs. Union of India & Another and other connected Civil Appeals has upheld DOP & PW's clarificatory OM dated 11.05..2001 (Board's letter dated 20.08.2001 relating to stepping up of pension/family pension of pre 1996 pensions upto 50%/ 30% of the minimum of the 5th CPC scale of pay which corresponds to the scale of pay held by the pensioner at the time of retirement. It has further been stated that revision of pension has to be done in the pay scale of Rs.18400-22400, which is the replacement scale of pay at the time of retirement, as such the applicant is not entitled for the revised pension with reference to higher scale of pay of Rs.22400-24500/-. It is further stated that the applicant cannot be given the benefit of the judgement of the case of P.P. Ayyar, which judgement has been implemented pursuant to the decision rendered by the CAT Bangalore Bench, which has been upheld by the Hon'ble High court by dismissing the Writ Petition and further which has been approved by the Hon'ble Supreme Court by dismissing the SLP.

3. We have heard the learned counsel for the applicant at admission stage. We are of the view that the matter is squarely covered by the judgement rendered by the Supreme court in the case of **K.S. Krishnaswamy & Others vs. Union of India & Another**, 2007(2) SCC (L&S) 491. At this stage, it will be useful to quote Para nos. 2 to 5 of the impugned order dated 02.07.2008 (Annexure A/1), which thus reads as under:-

"2. Vide Board's letter NO. 88E(GC)12-20 dated 25.8.1988, 48 SA Grade Posts in the grade of Rs.5900-6700/- were upgraded w.e.f. the date those were operated in the grade of Rs.7300-7600/-. The

appointment of those upgraded posts was with the approval of ACC and with prospective effect only. You retired on 30.9.1983 when the said post was in SAG. Therefore you have no claim whatsoever for fixation of pension with reference to PHOD grade for which you had never been approved for appointment by the ACC and in which grade you had never worked.

3. The Supreme Court, vide their common Judgement dated 23.11.2006 in Civil Appeal NO. 3174/2006 in the matter of Shri K.S. Krishnaswamy etc. vs. Union of India & Anr. And other connected Civil Appeals has upheld DOP&PW's clarificatory OM dated 11.05.2001 (Board's letter dated 20.08.2001 relating to stepping up of pension/family pension of pre 1996 pensioners upto 50%/ 30% of the minimum of the CPC scale of pay which corresponds to the scale of pay held by the pensioner at the time of retirement.

4. Subsequent to the Supreme Court's Judgement dated 23.11.2006, the Department & Pension and Pensioners' Welfare vide their OM dated 27.12.2006 have requested all the Ministries and Departments to revise pension of pre-1996 pensioners in terms of OM dated 17.12.1998 and OM dated 11.5.2001 read together. In view of Supreme Court's judgement supra and the DOP&PW's instructions, the revision of your pension in the pay scale of Rs.18400-22400/- which is the replacement of pay of the scale of pay of Rs.5900-6700 held by you at the time of retirement is correct and your claim to have pension revised with reference to higher scale of Rs.22400-24500/- is not feasible for acceptance.

5. As regards the case of Shri P.P. Ayyar, it is stated that he was given the benefit of refixation of pension in PHOD grade Rs.22400-24500/- on the basis of CAT, Bangalore Bench Order in OA No. 499/2000 being implemented in personem subsequent to dismissal of Writ Petition in the High Court and dismissal of Special Leave Petition/ Review Petition in the Supreme Court prior to their judgement dated 23.11.2006 in the case of Shri K.S. Krishnaswamy."

4. From the material placed on record, it is admitted that when the applicant retired from the post of Chief Engineer on 30.09.1983, at that time he was in the pay scale of Rs.2500-2750/-, pursuant to revision of pay scales by the Govt. on the recommendations of Central Pay Commission w.e.f. 01.01.1986, his pension was revised in the pay scale of Rs.5900-6700. From the portion, as quoted above, it is also evident that after coming into force the revision of pay scales, as recommended by the 4th Central Pay Commission w.e.f. 1.1.1986 vide Board's letter dated 25.08.1988, 48 selected 'A' Grade posts were upgraded prospectively with effect from the date those operated in the grade of Rs.7300-7600/-. In Para No. 2, it has been made clear that appointment of upgraded posts was with the approval of ACC. The applicant has already retired from service w.e.f. 30.09.1983 much before the posts were upgraded in the

higher scale of pay of Rs.7300-7600/- in the year 1988. The question which requires our consideration is whether the applicant is entitled to the revised pension of upgraded post w.e.f. 01.01.1996 simply because the post of Chief Engineer, which was in the grade of Rs.5900-6700/- , on which pay scale applicant has retired has been subsequently upgraded in higher scale i.e. Rs.7300-7600/- even if applicant has never held such scale/corresponding revised scale at the time of his superannuation/retirement. The matter on this point is no longer res-integra. The same stand decided by the decision of the Supreme Court in the case of K.S. Krishnaswamy (Supra). At this stage, it will be useful to quote Para nos. 13 to 15 of the judgement, which reads as under:-

"13. As the controversy/confusion still persisted and for the smooth and efficient implementation of the policy resolution, the Government of India issued further executive instructions by way of office memorandum dated 11.5.2001 clarifying the executive instructions issued on 17.12.1998. The substance of the executive instructions dated 11.5.2001 (by which the pensioners are aggrieved and the core question in these appeals) reads as under:

"In the course of implementation of the above order, clarifications have been sought by Ministries/Department of the 'post last held' by the pensioner at the time of his/her superannuation. The second sentence of OM dated 17.12.1998 i.e. 'pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the post last held by the pensioner', shall mean 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/retirement." (emphasis supplied)

14. The clarification brought out in the OM dated 17.12.1998 and OM dated 11.5.2001 is clearly discernible. Whereas OM dated 17.12.1998 speaks of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the post last held by the pensioner, the OM dated 11.5.2001 clarifies it as minimum of the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioner at the time of superannuation/retirement. The clarification brought about in the OM dated 11.5.2001 is of the last post held by the pensioner as the last scale of pay held by the pensioner at the time of superannuation/retirement.

15. It is common knowledge that the corresponding increase in any Pay Commission is of the scale of pay and not of the post."

5. Ultimately, the Apex Court has made the following observations in Para No. 18 of the judgement:-


"18. It is common knowledge that an increase in the pay scale in any recommendation of a Pay Commission is a corresponding increase in the pay scale. In our view, therefore, executive instructions dated 11.5.2001 have been validly made keeping in view the recommendations of the Pay Commission accepted by the Policy Resolution of the Government on 30.09.1997, clarified by executive instructions dated 17.12.1998. The executive instructions dated 11.5.2001 neither override the policy resolution dated 30.9.1997 nor executive instructions dated 17.12.1998 clarifying the policy resolution dated 30.9.1997. The executive instructions dated 11.5.2001 were in the form of further clarifying the executive instructions dated 17.12.1998 and do not override the same.

6. In this case also, as can be seen from Para nos. 3 & 4 of the impugned order, as reproduced in the earlier part of the judgement, the Railway Board has also issued instructions based on the instructions issued by the Department of Pension and Pensioners' Welfare vide OM dated 17.12.1998 and 11.05.2001. Instructions issued vide OM dated 17.12.1998 are paramateria to the instructions issued by the Railway Board vide RBE No. 232/1999 dated 09.09.1999 (Annexure A/3) whereas the instructions issued vide OM dated 11.05.2001 are paramateria to the Board's letter dated 20.08.2001. As already stated above, these two OMs have been considered by the Apex court. While interpreting the OM dated 17.12.1998, Apex Court has held that the pension of pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the posts last held by the pensioner which shall mean that the pension of the pensioner irrespective of their date of retirement shall not less than 50% of the minimum of corresponding scale as on 1.1.1996 of the scale which was held by the pensioner at the time of superannuation/retirement and revision of pension has to be based on the scale of pay as it is common knowledge that the corresponding increase in any Pay Commission is of the scale of pay and not of the post. Since the applicant has been granted pension and revised pay scale w.e.f. 1.1.1996, corresponding to scale of pay which the applicant was holding at the time of superannuation/retirement, we are of the firm view that the applicant is not entitled to the revised pension of the upgraded higher scale of post(s) of Chief Engineer, which post(s) has been upgraded subsequently in higher pay scale i.e. in the year 1988, almost five years after the retirement of the applicant.

7. The contention of the applicant that similar benefit has been extended to one Shri P.P. Ayyar, as such benefit should also be extended to him, cannot be accepted in view of the law laid down by the Apex Court in the case of K.S. Krishnaswamy (supra) whereby the controversy as involved in the case has been finally settled. In the case of K.S. Krishnaswamy, the Apex Court has laid down the law after considering the case on merit where as no such declaration of law has been laid down in the case of P.P. Ayyar. Simply because the judgement of the CAT Bench has been approved by the Hon'ble High court while dismissing the Writ Petition and also by the Hon'ble Supreme court by dismissing the SLP, it does not mean that the judgement of the CAT Bangalore Bench has merged into the order of the Hon'ble Supreme Court. In other words, the Hon'ble Supreme Court has not laid down the law in the case of P.P. Ayyar. The Apex Court in the case of K.S. Krishnaswamy in Para nos. 25 & 26 has categorically stated that while dismissing the SLP, the Court do not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court mean is that it does not consider it to be a fit case for exercising its jurisdiction under Article 136 of the Constitution. We do agree that the present case is fully covered by the law as laid down by the Apex Court in the case of K.S. Krishnaswamy whereby the issue regarding revision of pension of the pre-retired person has been settled and it has been held that revision of the pension has to be done with respect to corresponding scale of pay of post held by the pensioner at the time of superannuation/retirement and not with reference to the upgraded pay scale ^{of the} posts, which is the case as set up by the applicant.

8. For the foregoing reasons, the OA is dismissed at admission stage with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ