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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

(ORDER RESERVED ON 01.03.2016)

...
O.A No. 060/01125/2014 Date of decision: 12.3.2016
...

**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**
...

Lakhi Ram, IPS (Retd.), S/o Ch. Megh Ram, Resident of House
No.4232, Defence Colony, Jind.

...APPLICANT

BY ADVOCATE: Sh. R.K. Sharma.

VERSUS

1. Union of India, through Secretary to Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
2. State of Haryana through Financial Commissioner and Principal Secretary to the Government of Haryana, Home Department, Haryana Civil Secretariat, Chandigarh.
3. Accountant General (A&E), Haryana, Lekha Bhawan, Plot Nos.4 & 5, Sector 33-B, Chandigarh-160020.
4. Director General of Police, Haryana, Panchkula.
5. Manager, State Bank of Patiala, Mini Secretariat, Jind.

...RESPONDENTS

BY ADVOCATE: Sh. Ram Lal Gupta, counsel for respondent no.1.
Sh. Samarvir Singh, DAG, counsel for respondents no.2 to 4.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- "8. (i) Quash / set aside the order no.38/6/10-P&PW(A) dated 6th August, 2010, copy Annexure A-1 issued by respondent no.1 vide revision of pension in the

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revised pay band of Rs.37400-67000 with grade pay of Rs.8700/- w.e.f. 01.01.2006 has been declined to the applicant.

(ii) Quash Office Memorandum No.38/37/08-P&PW(A) dated 28th January, 2013, copy Annexure A-2 issued by the Ministry of Personnel, PG and Pensions, Department of Pension & Pensioners' Welfare, to the extent it denies the benefit of pension to the retirees prior to 01.01.2006 by taking 50% of the pay band plus grade pay even if they have completed more than 20 years of service i.e. para no.2 and 5 of Annexure A-2.

(iii) Directions may be issued to the respondents in general and respondent no.2 in particular to consider and grant the proper pension w.e.f. 01.01.2006 to the applicant after re-fixing the same in terms of Government of India letter no.38/37/08-P&PW(A) dated 01.09.2008 i.e. 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale of the applicant of Rs.48844/- i.e. Rs.24422/- per month and grant him all consequential benefits including interest on the delayed payment @ 18% on the amount of difference between the pension paid to the applicant w.e.f. 01.10.2006 and the pension actually due for this period, from the date it became due till the date of actual payment.

2. It is stated in the OA that the applicant joined as Inspector of Police in the erstwhile State of Punjab on 01.04.1958. He was promoted as Dy. S.P. in May, 1964 and on reorganisation of the State of Punjab, he was allocated to the State of Haryana. The applicant was inducted in the IPS cadre with year of allotment as 1973. The applicant was granted selection grade w.e.f. 01.01.1986 and he earned two increments in the selection grade of IPS on 1st of January, 1987 and on 1st of January, 1988 and subsequently retired from the IPS cadre on attaining the age of superannuation on 30.09.1988 after rendering more than 30½ years of service. Pension of the applicant was fixed keeping in view his pay drawn by him in the selection grade of Rs.4500-5700 at Rs.4800/- basic pay by

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applying formula of 61/66. However, benefit of two increments that he had earned in the selection grade of IPS in January, 1987 and January, 1988 was not granted to him w.e.f. 01.01.1996. The pay scales of the Central Government Employees were revised on the recommendations of 5th Pay Commission and pension was also revised accordingly. But at this stage also, pension of the applicant was fixed by applying formula of 61/66 and without taking into account 50% of the selection grade increments of IPS earned by the applicant in January, 1987 and January, 1988.

3. It is further stated that the pay scales of the Central Government employees were again revised w.e.f. 01.01.2006. Accordingly pension was revised and the selection grade of IPS was fixed in the pay band of Rs.37400-67000 with grade pay of Rs.8700/-. Pension of the applicant was again fixed ignoring two increments in the selection grade and by applying the formula of 61/66. The applicant's pension was fixed at Rs.21304 per month whereas it should have been Rs.24433 per month by taking 50% of the pay scale from which applicant retired and by giving benefit of two increments in the selection grade, which is also liable to be considered with retrospective effect and then his pension comes to Rs.24433/- per mensem. Government of India issued office memorandum no.38/37/08-P&PW(A) dated 01.09.2008 regarding fixation of pension of pre-2006 retirees (Annexure A/3). Para 4.2 of the same being relevant is reproduced below:-



"4.2 The fixation of pension will be subject to the provision that the revised pension in no case shall 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."

Government of India also issued Office Memorandum No.38/37/08-P&PW(A) dated 02.09.2008 (Annexure A/4). Para 5.2 of the said O.M. reads as under:-

"Linkage of full pension with 33 years of qualifying service shall be dispensed with. Once a Government servant has rendered the minimum qualifying service of twenty years, pension shall be paid at 50% of the emoluments or average emoluments received during the last 10 months."

Government of India issued further clarifications in continuation of O.Ms. dated 01.09.2008 and 02.09.2008 vide office memorandum No.38/37/08-P&PW(A) dated 12.05.2009 (Annexure A-5). Similar clarification was issued by the Government of India vide O.M. dated 19.03.2010 (Annexure A-6).

4. It has also been stated that as the pension of the applicant was not correctly fixed, therefore, he got served legal notice dated 30.12.2008 (Annexure A-7) to the respondents. In response to the legal notice, Director General of Police, Haryana vide his communication No.1699/W-1 dated 22.01.2009 (Annexure A/8) intimated to the applicant that as he had rendered service of 30 years, 5 months and 28 days i.e. less than 33 years, therefore, his pension was rightly fixed and further intimated that after the recommendations of 6th Pay Commission, Government of Haryana implemented the Government of India's Notification dated 01.09.2008 according to which pensions of

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retired IPS officers are to be revised by Pension Disbursing Officer. However, the respondents totally ignored the aspect that the condition of 33 years service had already been done away with vide O.M. dated 02.09.2008 (Annexure A-3). Similarly applicant received reply from the office of respondent no.3, dated 12.02.2009 (Annexure A-9). Respondent no.2 also took up matter with respondent no.1 with regard to the correct fixation of pension of the applicant vide letter dated 4th March, 2010 (Annexure A-11). However, vide impugned order A-1, respondent no.1 intimated that the orders relating to revision of pension of pre-2006 pensioners have been correctly issued as per the recommendations of Sixth Central Pay Commission and that no change is required to be made in this regard. The applicant then approached this Tribunal by filing OA No.1204/HR/2011. The Tribunal without considering the legal aspects, dismissed the OA with liberty to the applicant to challenge O.M. dated 28.01.2013 (Annexure A-16). Operative part of the order reads as under:-

"2. The respondents have taken a stand that the case of the applicant cannot be considered in terms of the judgment passed in OA No.890/HR/2013 titled Jai Narain Singal Vs. UOI decided on 02.01.2014 and the instructions dated 28.01.2013 which have not been challenged by the applicant.

3. Sh. R.K. Sharma, learned counsel for the applicant submitted that he may be permitted to withdraw the instant OA to enable him to file it afresh by challenging the instructions dated 28.01.2013 which may come in way of the applicant for grant of relevant relief. He further states that these instructions were not challenged in the case of Jai Narain Singal (supra).

4. In view of the above, this OA is dismissed as withdrawn with the aforesaid liberty."

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The applicant has therefore filed the present OA as per liberty granted by the Tribunal.

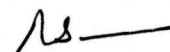
5. In the written statement filed on behalf of respondent no.1, it has been stated that the recommendations of a Central Pay Commission, as also the 6th Central Pay Commission, relating to improvements in service conditions of the employees covered under its Terms of Reference (TOR), are applicable only from the date from which the Pay Commission recommends the same to be implemented. As per para 2(A) of the TOR of the 6th CPC, contained in the Resolution dated 05.10.2006, the date of effect of its recommendation was a specific part of the TOR. The issue of date of effect has been specifically and clearly dealt with by the 6th CPC in the Chapter 6.5 of its Report. The main thrust of the recommendations of the 6th CPC in regard to date of effect is that:-

"(a) the revised structure of Pay Band and Grade Pay would need to be implemented from 01.01.2006 and (b) the recommendations regarding payment of full pension on completion of 20 years of qualifying service for Government employees and consequently the recommendation to this effect would take effect only prospectively."

While the improvement in the procedure for calculation of full pension without linking it to full 33 years of qualifying service was recommended to be given effect prospectively, this was only in case of pensioners retiring after 01.01.2006, i.e., the pensioners retiring in the revised pay structure effective from 01.01.2006 and not pensioners who had retired in the pre-revised pay structure obtaining prior to 01.01.2006. The recommendation of the 6th CPC contained in para 5.1.33 of their

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Report, relating to improvement in qualifying service by dispensing with the linkage to 33 years of service, is not applicable in case of pensioners who had retired prior to 01.01.2006. This recommendation is an improvement meant from a prospective date without altering the past structure and, therefore, the past pensioners who had retired before 01.01.2006 are outside this purview. The issue of past pensioners has been dealt with separately by the 6th CPC in paras 5.1.46 and 5.1.47 of its Report. This para is only applicable for revision of pension of past pensioners who retired before 01.01.2006 solely and exclusively on the principle of modified parity in terms of the concept earlier given by the 5th Central Pay Commission. The 6th Pay Commission recommended that based on the modified parity, the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the Pay Band and Grade Pay. Thus, this concept of modified parity was only applicable for the revision of amount of pre-revised pension linked to the minimum of the Pay Band and the Grade Pay and not by altering the structure of qualifying service of 33 years. Therefore, the concept of modified parity for past pensioners who retired before 01.01.2006 and the improvement in qualifying service without linkage with the 33 years of service are two separate and different recommendations and not to be clubbed and seen as one composite whole. While accepting the recommendations of the 6th Central Pay Commission, the Government in the Resolution dated 29.08.2008 clearly made reference to the issue of non-linkage of full pension with 33 years



and that of revision of pension of past pensioners, in two separate columns, i.e. column no.2 & 12 respectively. Thus, these two issues are different and stand on different footing altogether. The issue of pension revision of pre-2006 pensioners was implemented by way of the OM of Department of Pensions issued on 01.09.2008, while the issues relating to regulation of pension in case of pensioners retiring after 01.01.2006, including regulations as non-linkage of full qualifying service with 33 years was issued by Department of Pension on 02.09.2008. It is basically because the issues pertaining to past pensioners and the pensioners retiring on or after 01.01.2006 stand on a different footing altogether and there is no comparison between the two.

6. In the written statement filed on behalf of respondents no.2 to 4, similar averment has been made as in the written statement filed on behalf of respondent no.1. It has further been stated that Sh. Lekhi Ram was granted selection grade of IPS (Rs.1800-100-2000) vide Government order no.16/2/86-2HGI dated 19.08.1986 and consequent upon his promotion in the selection grade his pay has been fixed @ Rs. 1800/- in the scale of Rs.1800-100-2000 w.e.f. 01.01.1986 as approved vide Government Memo no.46/9/86-6HGI dated 06.11.1986 and he earned two increments in the selection grade of IPS on 01.01.1987 @ 4650/- and 01.01.1988 @ 4800/-. It is also admitted that he rendered 30 years 5 months and 28 days in Government service. The pension of the applicant was fixed on the basis of his pay scale drawn by him in the selection grade,

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which was revised w.e.f. 01.01.1996 on the basis of pension, he was drawing prior to 01.01.1996. Hence, no further change was required. There is no provision in the Pension Rules to grant benefit of Selection Grade increments separately as the pension is revised on the basis of pension drawn by the petitioner at the time of revision of pension and the same was fixed. The pensioner retired in the Selection Grade of Rs.4500-5700 which was further revised to Rs.14300-18300 w.e.f. 01.01.1996 and further revised to Rs.37400-67000 w.e.f. 01.01.2006 as per Government of India notification no.F.No.38/37/06-P&PW(A) dated 01.09.2008 for implementation of Government's decision on the recommendations of the Sixth Central Pay Commission-Revision of Pension of pre-2006 pensioners/family pensioners etc. The pension of the applicant has been correctly fixed as per relevant instructions.

7. In the replication regarding written statement filed on behalf of respondent no.1, it is stated that in view of Office Memorandum dated 01.09.2008 and the interpretation thereof given by the Hon'ble Full Bench and also the latest judgment of the Hon'ble Principal Bench rendered in OA No.1165/2011, OA deserves to be allowed. Copy of judgment dated 21.04.2015 is attached as Annexure A-17.

8. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant narrated the background of the matter and stated that the applicant was getting lesser pension, than he was entitled to after 01.01.2006, firstly for the reason that the two increments that he got in

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selection grade of IPS had not been taken into account while fixing his pension at the time of his retirement and the revision of pension as a result of the recommendations of the 5th CPC had also been done incorrectly. Learned counsel further stated that the pension of the applicant had to be fixed keeping in view the pay in the pay scale corresponding to the pay scale in which he was serving when he retired from service. He stated that the circular dated 28.01.2013 (Annexure A-2) had been quashed through the judgment dated 07.05.2015 of the Delhi High Court in Writ Petition No.8012/2013 in the case of **S.A. Khan & another Vs. Union of India & others**. Learned counsel also referred to the judgments of the Principal Bench dated 20.11.2014 in OA No.937/2010 with OA No.2101/2010 in the case of **All India S-30 Pensioners Association and others Vs. Union of India and others** and judgment dated 21.04.2015 in OA No.1165/2011 with OA No.2165/2011 and OA No.246/2012. He stated that in the judgment of 21.04.2015 the OMs dated 03.10.2008 and 19.03.2010 were quashed and the respondents were directed that the qualifying service for earning full pension would be treated as 20 years even for those employees who retired from the Central Government Service on or before 31.12.2005. The respondents were also directed to modify/amend all relevant Government orders/letters/notifications in accordance with this decision and it was made clear that parity of pension between pre and post 01.01.2006 pensioners (on the question of eligibility of minimum pensionable service of 20 years) would apply both as regards

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pension and family pension. Learned counsel stated that to the best of his knowledge this judgment of the Principal Bench had gained finality as the same had not been impugned before a higher forum.

9. Sh. Ram Lal Gupta, Senior CGSC representing respondent no.1 reiterated the content of the written statement filed by him and also placed reliance on judgment dated 21.12.2012 in the case of **R.K. Aggarwal and others versus State of Haryana and others** in CWP No.19641 of 2009, while asserting that the recommendations of the 6th CPC clearly envisaged distinction between pre and post 01.01.2006 retirees and these recommendations could not be departed from.

10. Learned counsel for respondents no.2 to 4 also reiterated the content of the written statement filed on behalf of Government of Haryana and the other official respondents.

11. We have given our careful consideration to the matter. We do not consider it necessary to adjudicate on the claim of the applicant for revision of his pension for the pre and post 01.01.2006 period, on the basis of his claim that the two increments earned by him in selection grade of IPS had not been taken into account for fixing his pension when he retired since the applicant could have made this claim any time after the date of his retirement, but he has only raised the same through the present OA filed in December, 2014.

12. Regarding the prayer of the applicant that OM dated 28.01.2013 be quashed to the extent it denies the benefit of full

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pension to the retirees prior to 01.01.2006 by taking 50% of the pay band plus Grade Pay even if they have completed more than 20 years of service, we notice that this OM has already been quashed by the Delhi High Court vide judgment dated 07.05.2015 in the case of S.A. Khan (supra). Besides, from a reading of the judgments of the Principal Bench cited by learned counsel for the applicant, it is clear that full parity has been allowed to the retirees of the pre 01.01.2006 period with the retirees of post 01.01.2006. Hence the claim of the applicant for fixing his pension in terms of GOI letter dated 01.09.2008 i.e. 50% of the minimum of the pay in the pay band plus Grade Pay corresponding to the pre-revised pay scale of the applicant is validated, and the respondents no.2 & 3 are directed to revised the pension of the applicant accordingly. However, arrears of pension shall only be admissible to the applicant for a period of 18 months prior to the date of filing of the OA viz. from 15.06.2013 onwards. OA is allowed accordingly and action in this regard may be completed within a period of three months from the date of a certified copy of this order being served upon the respondents.

13. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

Place: Chandigarh.
Dated: 12.3.2016

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