

(Reserved on 04.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the 28th day of **May, 2018**.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/00658/2016

1. Mathura Prasad, aged about 76 years, S/o Late Hajari Lal, resident of 12/1, Tula Ram Bagh, Allahabad.
2. Shankar Lal, aged abut 75 years, S/o Late Bachcha Lal, Resident of 5/5, Hasimpur, Allahabad.

.....Applicants.

VE R S U S

1. Union of India through Secretary to the Ministry of Personnel, PG & Pensions, Department of Pension & Pensionrs' Welfare, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi.
2. Union of India through Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi - 110011.
3. Director General, EME, EME Directorate (EME-Civ), Army Headquarters, DHQ PO New Delhi – 110011.
4. Commandant & M.D, 508 Army Base Workshop, Allahabad Fort – 211005.
5. Chief Controller of Defence Accounts (Pension), Draupadighat, Allahabad.

.....Respondents

Advocate for the applicants : Shri Swayember lal

Advocate for the Respondents: Shri R.P. Maurya

O R D E R

The OA is filed with prayer for the following main reliefs:-

“A. To issue writ, order or direction in the nature of certiorari to quash the impugned orders dated 13 Aug 2014, 07 Aug 2014 and 22-01-2014 (Annexure A-1 to compilation No. 1) passed by Respondent No. 5.

B. To issue a writ, order or direction in the nature of mandamus directing the Respondents to issue revised PPOs to the applicants by fixing the pension of applicants as per resolution dated 29.09.2008 and CAT Principal Bench, Delhi order dated 1-11-2011 and Hon’ble High Court Delhi judgment and order dated 29-4-2013 from 1-1-2016 by using the fitment table of OM issued by the Ministry of Finance Department of expenditure dated 30.08.2008. Admissible arrears be directed to be paid to the applicants alongwith 18% p.a. interest from the date of due amounts to the date of actual payments to the applicants. Family pensions may also be directed to be revised accordingly.”.

2. The applicant No. 1 on attaining the age of superannuation, retired from service on 31.01.1998 and the applicant No. 2 took voluntary retirement and retired on 30.06.1999. At the time of retirement, both the applicants were in pay scale of Rs. 5000-8000. After retirement, the applicants No. 1 was granted pension Rs. 2817/- per month from 01.02.1998. which was revised after implementation of 6th CPC report from 01.01.2006 and was fixed Rs. 6750/- per month. It is stated in the OA that the pension of the applicants should have been fixed as per the OM dated 28.01.2013 (Annexure A-12), which refers to OM dated 30.08.2008 of Ministry of Finance, Department of Expenditure (Annexure A-13), which contains a fitment table and, according to this fitment table, the pension of the applicant No. 1 ought to have been revised to Rs. 7590/- per month instead of 6750/- w.e.f. 01.01.2006. Likewise the pension of the applicant No. 2 , who retired on 30.06.1999, was fixed at Rs. 2958/- per month w.e.f. 01.07.1999 and on revision w.e.f 01.01.2006,

it was fixed at Rs. 6750/- per month, whereas, as per OM dated 30.08.2008, his pension ought to have been fixed at Rs. 7730/- per month instead of Rs. 6750/- per month w.e.f. 01.01.2006. It is further stated that as per Resolution of the Government dated 29.08.2008 (Annexure A-3) implementing the recommendation of 6th CPC, the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. It is further stated that the DOPT while issuing OM dated 01.09.2008 (Annexure A-4) for revision of pension on implementation of 6th CPC Report to the pre-retirees of 2006 pensioners omitted certain words in para 4.2 of the Resolution dated 29.08.2008 to which the DOPT issued a clarification dated 03.10.2008 (Annexure A-5), clarifying that the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay from which the applicants had retired.

3. It is stated that the OM dated 03.10.2008 was arbitrary and illegal and contrary to the Resolution of the Government dated 29.08.2008. The DOPT also issued a clarification vide OM dated 14.10.2008 (Annexure A-6) affirming the OM dated 03.10.2008. It is stated that the OM dated 03.10.2008 (Annexure A-5) and OM dated 14.10.2008 (Annexure A-6) became subject matter of challenge and the C.A.T., Principal Bench vide order dated 01.11.2011 (Annexure A-7) passed in O.A No. 655/2010 quashed the above two OMs. The order of the Tribunal dated 01.11.2011

was also upheld by the Hon'ble High Court, Delhi vide judgment dated 29.04.2013 (Annexure A-8) and the SLP in this matter was also dismissed by the Hon'ble Supreme Court vide judgment dated 17.03.2015 (Annexure A-9).

4. It is submitted that on account of quashing of the OM dated 03.10.2008 and 14.10.2008, the pension of the applicants which was calculated under para 4.1 of the OM dated 01.09.2008 by the pension paying authority i.e. paying Banks, needs to be re-calculated on the basis of pay drawn by them at the time of retirement in the pay scale applicable to them before 01.01.2006 from which the applicants retired in the pay band applicable to that pay scale with applicable Grade Pay (Para 4.18 of the OA). Accordingly, their PPOs (Annexure A-1) need to be revised with effect from 01.01.2006 correcting wrong fixation of their pension under para OM dated 01.09.2008 instead of as per Resolution dated 29.08.2008. The instant O.A has been filed for correct fixation of pension on revision w.e.f. 01.01.2006.

5. The respondents have countered the OA in Counter Affidavit stating that at the time of retirement, the applicants were drawing pay in pay scale of Rs. 5000-8000. The minimum revised pension w.e.f. 01.01.2006 in the case of the applicants is Rs. 6750/- which is 50% of sum of the minimum in the pay band + grade pay in revised Pay Band -2 (i.e. 9300-34800) i.e., $9300 + 4200 = \text{Rs. } 13,500$, as 50% of Rs. 13,500 is Rs. 6750/-. It is also stated that the OM dated 30.08.2008 (Annexure A-

13) is for the purpose of fixation of pay of employees as on 01.01.2006 in revised pay band and grade pay and it is not applicable for fixation of pension. It is contended that the pension revised by the PPO of the applicants are correct as per the Office Circular dated 17.09.2008 and 11.02.2013. It is further submitted that the pension of pre 2006 retirees are fixed on the basis of calculation as per paragraph 4.1 of the OM dated 01.09.2008 or in the manner indicated in the O.M. dated 28.01.2013, whichever is more beneficial to the pensioner. Accordingly, pension of the applicants was correctly fixed at Rs. 6750/- per month. It is further submitted that in compliance of the order of the Tribunal, the pension of all pre 2006 pensioners was revised in accordance with PCDA (P), Allahabad OM dated 28.01.2013 w.e.f. 01.01.2006 instead of 24.09.2012. Accordingly, the pension of the applicants was calculated as per the fitment table (Annexure CA-1) and re-fixed at Rs. 6750/- w.e.f. 01.01.2006.

6. The applicants have filed Rejoinder Affidavit reiterating that the pension of the applicant No. 1 and 2 should have been revised on the basis of OM dated 30.07.2015, which has been issued after dismissal of the SLP in the matter by the Hon'ble Apex and it should be re- fixed at Rs. 7590 /- per month and Rs. 7730/- per month w.e.f. 01.01.2006 for the applicant no. 1 and no. 2 respectively in place of Rs. 6750/- per month. It is further stated that the fixation of pay of the applicants as on 01.01.2006 should have been done in accordance with the fitment table at Annexure CA-1 of the counter affidavit, taking into account the last pay drawn by the applicants at the time of retirement and then 50% of that pay.

7. The respondents in their Supplementary Counter Affidavit have mentioned that the order dated 01.11.2011 of CAT, Principal Bench in OA No. 655/2010 has been implemented by Government and issued an office memorandum dated 30.07.2015 (Annexure A-11) which has been accepted by CAT as compliance of the order in Contempt Petition no. 229/2015 in OA No. 655/2010. The relief sought for in this OA is not as per the order dated 01.11.2011 of CAT, Principal Bench.

8. Heard Shri Swayamber Lal, learned counsel for the applicant who explained in detail about the facts of the case and the contentions of the applicants in the pleadings. He submitted that the applicants want their cases to be reconsidered after issue of the OM dated 30.07.2015 (Annexure A-11) of the DoPT implementing the order dated 01.11.2011 of Principal Bench of this Tribunal (Annexure A-7), which has been upheld by the Hon'ble Apex Court.

9. Shri R.P. Maurya, learned counsel for the respondents was heard and was allowed to submit written arguments within two weeks. The written arguments dated 16.05.2016 has been submitted by him reiterating the contentions of the respondents in the Counter Affidavit.

10. The pleadings and submissions of both the parties have been duly considered by me. The issue is whether the reliefs sought by the applicants are in accordance with the DoPT OM dated 30.07.2015

(Annexure A-11), by which the OM dated 28.01.2013 (Annexure A-12) was implemented with effect from 01.01.2006 in place of 24.09.2012 (vide para 9 of the OM dated 28.01.2013) as per the orders of the Principal Bench of this Tribunal in O.A No. 653/2010.

11. The dispute in this OA is regarding the interpretation of the following provisions in para 12 of the Resolution dated 29.08.2008 (Annexure A-3) by which the Govt of India, while accepting the recommendation of 6th CPC:-

“12..... 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 sum of the minimum of the pay in the pay band and the grade pay there on corresponding to the pre-revised pay scale of from which the pensioner had retired (5.1.47).”

As stated in the OA, this provision was interpreted by DoPT vide OM dated 03.10.2008 and 14.10.2008 in a manner which was found to be incorrect by the Principal bench of this Tribunal vide order dated 01.11.2011 in OA No. 655/2010, which was subsequently upheld in Hon’ble Apex Court.

12. After the order dated 01.11.2011 of this Tribunal, the DoPT decided to further revise the pension of retired employees retired prior to 01.01.2006 and issued the OM dated 28.01.2013 (Annexure A-12), which was implemented w.e.f., 24.09.2012. The OM dated 28.01.2013 interpreted the provision in OM dated 29.08.2008 by stating the following:-

“2. It has been decided that the pension of pre-2006 pensioners as revised w.e.f., 1.1.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 1.9.2008, as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August 2008. In the case of HAG and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above-referred OM dated 30.08.2008 of Ministry of Finance, Department of Expenditure.

4. A revised concordance table (Annexure) of the pre-1996, pre-2006 and post 2006 pay scales/pay bands indicating the pension/family pension (at ordinary rates) payable under the above provisions is enclosed to facilitate payment of revised pension/family pension.”

From above, it is clear that what is meant by the provisions in the Resolution dated 29.08.2008 (as stated in para 10 above) has been calculated and the same is annexed to the OM dated 28.1.2013 to facilitate payment of revised pension/family pension. Perusal to the ‘Annexure’ of the OM dated 28.01.2013 indicates that for the pre-revised pay scale of Rs. 5000-8000, from which the applicants had retired, the “pension = 50% of sum of minimum pay in the pay band and grade pay in the pay scale as per fitment table” as per the column 9 of the aforesaid Annexure is stated to be Rs. 6750/- (vide serial no. 10 of the Annexure to the OM dated 28.1.2013).

13. Vide the OM dated 30.07.2015 issued by DoPT (Annexure A-11), the OM dated 28.1.2013 was made effective from 1.1.2006. As stated in para 11 of the Supplementary Counter Affidavit filed by the respondents, which has not been denied or contradicted by the applicants in the Supplementary Rejoinder Affidavit or any of their

pleadings, the respondents submitted before the Principal Bench of this Tribunal in response to the contempt case, that after issue of OM dated 30.07.2015, the order dated 01.11.2011 of the Tribunal has been implemented and this contention was accepted in the contempt petition no. 229/2015 in OA No. 655/2010. Therefore, the OM dated 30.07.2015 is in compliance of the order dated 01.11.2011 of the Principal bench of this Tribunal. The applicant's plea in this OA is also to consider their case for revision of pension in accordance with the OM dated 30.07.2015, which is clear from the para 7 of the Rejoinder affidavit filed by the applicants. As discussed in para 10 of this order, as per the OM dated 30.07.2015 and 28.01.2013, the applicants are entitled to the revised pension of Rs. 6750/- per month as stated in serial no. 10 of the Annexure to the OM dated 28.01.2013.

14. The argument of the applicants in para 4.18 of the OA is that their revised pension is required to be fixed on the basis of the pay drawn by them at the time of retirement in the pay scale applicable to them before 01.01.2006, in the pay band applicable to that pay scale from which the applicant had retired. This is clearly not what is meant by the expression used in OM dated 28.1.2013 i.e., " 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the petitioner has retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No. 1/1/2008-IC dated 30th August, 2008." Further, the meaning of the expression has been indicated in the Annexure of the said OM and the serial no. 10 of the Annexure of the said OM dated

28.1.2013 is relevant for the case of the applicants. Since the applicants have stated in para 4.3 of the OA that they are getting the revised pension of Rs. 6750/- w.e.f., 1.1.2006, there is no case for further revision of their pension as per the DoPT OM dated 30.07.2015 read with OM dated 28.01.2013.

15. In view of the above discussions, the grounds furnished by the applicants in this OA are not sufficient to call for any interference of this Tribunal in the matter. Thus, the OA lacks merit and is accordingly dismissed. No costs.

(GOKUL CHANDRA PATI)

MEMBER- A.

Anand...