

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 642/2015
MA 535/2015

Order reserved on: 16.12.2015
Order pronounced on: 18.12.2015

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Pro-Rata Pensioners Association (Regd.)
Through its General Secretary,
Shri Sunil Kumar Sharma
B-37, Satyawati Nagar,
Ashok Vihar, Phase-3,
Delhi-110052
 2. Shri Sunil Kumar Sharma
S/o Lt. Shri K.L. Sharma
B-37, Satyawati Colony
Ashok Vihar, Phase-3,
Delhi-110052
 3. Shri Ram Nath,
S/o Late Shri Hem Raj
R/o 194, IInd Floor
Bhai Parmanand Colony,
Delhi-110009
- ... Applicants

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. Union of India
Through Secretary of Personnel,
Public Grievances and Pensions,
Deptt. Of Pension and Pensioners Welfare
3rd Floor, Lok Nayak Bhawan,
New Delhi-110003
2. Secretary to the Government of India
Department of Expenditure
Ministry of Finance,
North Block, New Delhi
3. Department of Telecommunication
Through its Secretary
Ministry of Communications and I.T.

Sanchar Bhawan, 20, Ashoka Road,
New Delhi

... Respondents

(Through Mrs. Harvinder Oberoi, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants are aggrieved by the action of the respondents declining the benefit of the 6th Pay Commission as per recommendation at Sl.No.12 of the Resolution dated 29.08.2008 relating to Department of Pension and Pensioners' Welfare (DPPW) regarding implementation of the recommendations of the 6th Pay Commission on pension. Sl. No.12 of the Resolution reads as follows:-

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| 12 | All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. 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 thereon corresponding to the pre-revised pay scale from which the pensioner had retired. (5.1.47). | Accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86, i.e. basic pension + Dearness Pension (wherever applicable) + dearness relief of 24% as on 1.1.2006, instead of 1.74. |
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2. The DPPW issued OM dated 28.01.2013 to which an annexure has been attached showing revised pension/family pension of pre-2006 pensioners. The applicants were in the pay scale of Rs.4500-125-7000 and according to this chart, 50% of the minimum pension should have been Rs.5585/- but the respondents have only granted them the pension of Rs.3500/- per month. Therefore, the applicants have filed this OA praying for the following reliefs:-

“(a) set aside the impugned letter dated 12.12.2004 passed by the respondents to the extent it declines the benefits to the applicants, in terms of recommendations of 6th Central Pay Commission passed vide resolution No.38/37/08-P&PW (A), published in Gazette of India dated 29.08.2008 in the Gazette of India and direct the respondents to revised the pension of the applicants in accordance with Column 9 of Annexure of OM dated 28.01.2013 and further respondents be directed to delete para 5 of OM dated 28.01.2013, which is in contravention of orders dated 01.11.2011 of this Hon’ble Tribunal as well as of Hon’ble High Court in W.P. (C) No.2350/2012;

(b) the respondents be directed to provide the benefits of revised pension by implementing the recommendations of 6th Central Pay Commission in its true letter and spirit as accepted with certain modifications vide Resolution 29.08.2008 since 01.01.2006 alongwith interest of arrears; and

(c) any other further relief which this Hon’ble Court deems fit and proper may also be given in favour of the applicants and against the respondents”.

3. The learned counsel for the applicants referred to the judgment of the Hon’ble High Court in W.P. (C) No.8012/2013 and W.P. (C) No.8056/2013. The petitioners in the said writs had

challenged letters dated 3.10.2008 and letter dated 1.10.2012 issued by the Ministry of Personnel, P.G. and Pensions to the extent it stipulated grant of full pension on completion of 33 years of qualifying service and draws a distinction between those who retired before and after 1.01.2006. The result was that those who superannuated after 1.01.2006 and have rendered a minimum of 20 years service would be entitled to full pension and those who superannuated before the said date would be liable to have the pension pro-rata decreased for each year less service rendered, taking 33 years as full pensionable service period. This was examined by the Hon'ble High Court and the writs were allowed with a direction that the writ petitioners would be entitled to full pension post January 01, 2006 without any pro-rata cut therein.

4. The learned counsel for the applicants further drew our attention to order of this Tribunal dated 21.04.2015 in OA No.1165/2011 with connected cases in which the prayer of the applicants arose from a clarification issued by the DPPW dated 3.10.2008, in specific, challenging the following provision:

"The pension will be reduced pro-rata, where the pensioner has less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs.3500/- p.m."

5. It would be noted that this is akin to para 5 of OM dated 28.01.2013 which reads as follows:-

"5. The pension so arrived at in accordance with para 2 above and indicated in Col.9 of Annexure will be reduced pro-rata, where the pensioner has less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable before 01.01.2006 and in no case it will be less than Rs.3500/- p.m."

6. In this aforesaid OAs, Sl.No.12 of Resolution dated 29.08.2008 referred to above was examined along with several judgments of the Hon'ble Supreme Court and the impugned orders dated 3.10.2008 and 19.03.2010 were held violative of law laid down by the Hon'ble Supreme Court and were quashed and set aside and the respondents directed that the qualifying service for earning full pension will be treated as twenty years also for those who retired from the Central Government service on or before 31.12.2005 and were alive on that day.

7. The applicant states that, therefore, clearly in view of the above, para 5 of OM dated 28.01.2013 contradicts the above judgments and should be deleted and the applicants provided the benefits of revised pension by implementing the recommendations of 6th Pay Commission in its true letter and spirit as accepted with certain modifications vide resolution dated 29.08.2008 since 1.01.2006.

8. The applicants further drew our attention to OM dated 1.09.2008 of DPPW on the subject of implementation of government's decision on the recommendations of the 6th Central

Pay Commission – Revision of pension of pre-2006 pensioners/ family pensioners etc., para 4.2 whereof reads as follows:

“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.”

It is thus argued that based on this OM or OM at Annexure A-3 dated 28.01.2013, the pre-1.01.2006 pensioners also should get pension not less than fifty percent of the minimum of the pay in the pay band plus the grade pay from 1.01.2006. Moreover, no pro-rata deduction should be made as per law settled by the Hon'ble High Court in W.P. (C) No.8012/2013 and W.P. (C) No.8056/2013 (supra) and the Tribunal in OA No.1165/2011 (supra).

9. The learned counsel for the respondents, first of all, raised the preliminary objection that this OA has been filed by an Association and only two affected parties. Therefore, this suffers from the defect of non-joinder of necessary parties as pension to each individual employee would have to be determined and no general order can be passed on the basis of the Associations' representation. At best, in case the OA is allowed, the pension of applicants no.2 and 3 could be modified. We do not accept this argument because the issue raised here is a matter of

principle and how the pension has to be fixed. Once that principle is decided, it will apply to all employees equally. Therefore, the OA is maintainable. Learned counsel for the respondents further states that the applicants were initially in Department of Telecommunications (DoT) and they got absorbed in 2000 when MTNL was created. At the time of absorption, they had the choice of opting for either pro-rata pension under government (DoT) or pensionary benefits applicable in MTNL on the basis of combined services rendered in government and MTNL. The applicants, however, opted for pro-rata pension. Moreover, they retired before 1.01.2006. It is, therefore, contended that they have no claim to benefits accruing to government servants on the new pension benefits arising out of 6th CPC recommendations, which came into effect on 1.01.2006.

10. We have heard the learned counsel for the parties and gone through the pleadings available on record.

11. It is clear that OM dated 1.09.2008 applies to the applicant. In that, para 4.2 specifically stipulates that pension so revised shall not be lower than fifty percent of the minimum of the pay in the pay band. In annexure to the OM dated 28.01.2013 also, the minimum of the pension has been accordingly indicated. Para 5 of the said OM dated 28.01.2013 which provides for pro-rata reduction is thus clearly in violation of these OMs and of the judgment of the Hon'ble High Court in W.P. (C) No.8012/2013 and W.P. (C) No.8056/2013 (supra) and the order of the Tribunal in OA No.1165/2011 (supra). In fact, in

the order passed by the Tribunal in OA 1165/2011, the OM dated 3.10.2008, which specifically provides for pro-rata reduction akin to para 5 of OM dated 28.01.2003, has been quashed. Therefore, para 5 of OM dated 28.01.2003 needs to be deleted.

12. We, therefore, allow the OA, set aside order dated 12.12.2014 and direct the respondents to fix the pension of the applicant in accordance with OM dated 1.09.2008 and annexure to OM dated 28.01.2003 i.e. they should get pension not less than fifty percent of the minimum of the pay in the pay band plus the grade pay from 1.01.2006. We further set aside para 5 of OM dated 28.01.2003. The respondents are directed to issue modification accordingly. Time frame fixed is a period of two months from the receipt of a certified copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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