

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.814/2014

Order reserved on 3rd April 2018

Order pronounced on 5th April 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Balbir Singh Ahuja
Son of Kartar Singh
Resident of C-353, Defence Colony
New Delhi – 110 024
(Retd. as Judicial Member, Income Tax
Appellate Tribunal)
(since deceased through his Lrs.
- 1a. Mini Ahuja
Wife of late Balbir Singh Ahuja
r/o of C-353, Defence Colony
New Delhi – 110 024
- 1b. Ravinder Singh Ahuja
Son of late Balbir Singh Ahuja
r/o of C-353, Defence Colony
New Delhi – 110 024
- 1c. Arshleen Ahuja
Daughter of late Balbir Singh Ahuja
Wife of Jasbir Singh Aneja
r/o Old No.12, New 23, Chivaliar Shivaji
Chennai – 600017
- 1d. Gurneet Sachar
Daughter of late Balbir Singh Ahuja
w/o Birenjit Soingh Sachar
r/o Oman Trading Establishment
PO Box 175 Code 117
Sultanate of Oman

..Applicants

(Mr. Rohit Aggarwal and Mr. Mitash Charan, Advocates)

Versus

Union of India through

1. Secretary
Department of Personnel

Ministry of Personnel
Public Grievance and Pensions
North Block, New Delhi

2. Secretary
Ministry of Finance
Department of Revenue
North Block, New Delhi
3. Pay & Accounts Officer
Central Pension Accounting Office
Govt. of India
Trikoort-2, Bhikaji Cama Place
New Delhi
4. Pay & Accounts Officer
Ministry of Law, Justice & Legal Affairs
4th Floor, Janpath Bhawan
Janpath, New Delhi – 110 001
5. Central Bank of India
Pension Section
Parliament Street
New Delhi
6. Income Tax Appellate Tribunal
10th & 11th Floor, Loknayak Bhawan
Khan Market, New Delhi – 110 003

..Respondents

(Mr. Rohit Aggarwal and Mr. Mitash Charan, Advocate)

O R D E R

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(i) quash and set aside order dated 31.01.2012 passed by Respondent No.3 and communication / letter No.F.315/PAO-LA/2012-13/3305 dated 18.10.2013 and communication / letter No.F.315/PAO-LA/2013-14/3712-13 issued by Respondent No.4, whereby, the Respondent Nos. 3 and 4 held that the Applicant is entitled to Pension @ 50% of Rs.67,000/- i.e. Rs.33,500/-

(ii) direct the Respondents to fix the pension of the Applicant at Rs.37,500/-

(iii) direct the Respondent No.3 and 4 to issue fresh PPO in lieu of the PPO dated 31.01.2012 and 01.09.2013, whereby, the pension of the Applicant is fixed Rs.33,500/- p.m. w.e.f. from 01.01.2006;

(iv) direct the family pension be worked out also on the basis of the pension of Applicant i.e. Rs.37,500/- w.e.f 01.01.2006; and in this behalf.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant, Balbir Singh Ahuja, was appointed as Judicial Member, Income Tax Appellate Tribunal (ITAT) under Ministry of Law, Justice & Legal Affairs, Govt. of India (respondent No.4) on 01.05.1971. He superannuated from service from the said post on 10.06.1987. At the time of his retirement, he was in the pay scale of ₹7300-7600 and accordingly, he was sanctioned a pension of ₹3861/- per month as per the extant rules. The said pension was revised from time to time with the revision of the pay scale of the post of Member, ITAT.

2.2 The pay scale of the post of Member, ITAT was revised to ₹22400-24500 in 5th CPC and to ₹67000-79000 in 6th CPC. Accordingly, the applicant's pension under the 6th CPC was fixed at ₹33500/- vide Annexure A-5 order dated 01.09.2013.

2.3 The pay scale of the post of Member, ITAT was upgraded by respondent No.4 vide order dated 06.10.1999 (p. 89) from ₹7300-7600 to the pay scale corresponding to ₹7300-8000 (pre-revised) at par with the Members of CEGAT. Under 5th CPC, the replacement pay scale for ₹7300-8000 was ₹22400-24500 and ₹75500-80000 under 6th CPC.

2.4 With this upgradation, the pension of the applicant under 6th CPC was fixed at ₹37750/- and was subsequently revised to ₹49075/- in consideration to his age in terms of O.M. dated 03.10.2008 of Department of Pension & Pensioners' Welfare, Govt. of India w.e.f 01.07.2012. In the meanwhile, respondent No.3, vide order dated 31.01.2012 addressed to respondent No.5, informed that the applicant's pension has been incorrectly fixed and downwardly revised it to ₹33500/- w.e.f. 01.01.2006.

Aggrieved by this reduction, the applicant has filed the instant O.A. challenging Annexure A-1 (colly.) order dated 31.01.2012 and seeking the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply.

4. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties. Mr. Rohit Kumar Aggarwal, learned counsel for applicant and Mr. Rajesh Katyal, learned counsel for respondents were heard.

5. During the pendency of this O.A., the applicant expired and thus M.A. No.1055/2016 was filed for bringing his legal heirs on record. The said M.A. was allowed by this Tribunal vide order dated 11.08.2016.

6. Learned counsel for applicants, besides highlighting the averments made in the O.A., submitted that a Full Bench of this Tribunal in O.A. No.655/2010 along with connected cases, vide order dated 01.11.2011, had made the following observations:-

“Modified parity conceded

137.20 We have given our careful consideration to the suggestions. While we do not find any merit in the suggestion to revise the pension of past retirees with reference to maximum pay of the post held at the time of retirement, as revised by the Fifth CPC, there is force in the argument that the revised pension should be not less than that admissible on the minimum pay of the post held by the retiree at the time of retirement, as revised by the Fifth CPC. We have no hesitation in conceding the argument advanced by pensioners that they should receive a pension at least based on the minimum pay of the post as revised by Fifth Pay Commission in the same way as an employee normally gets the minimum revised pay of the post he holds. We recommend acceptance of this principle, which is based on reasonable considerations.”

7. The Full Bench finally, disposing of the said O.A., issued the following directions:-

“30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.”

8. It was vehemently argued by the learned counsel for applicants that the pension of Mr. Balbir Singh Ahuja was revised post-6th CPC taking into consideration the order dated 06.10.1999 and hence its reduction vide order dated 31.01.2012 was illegal.

9. *Per contra*, Mr. Rajesh Katyal, learned counsel for respondents submitted that Mr. Balbir Singh Ahuja, retired in the year 1987 much before the pay scale of the post of Member, ITAT was revised vide order

dated 06.10.1999. Inadvertently, his pension was fixed taking into consideration the revised pay scale, in terms of Annexure A-5 order dated 01.09.2013. This mistake was detected much later and accordingly, vide the impugned order Annexure A-1 (colly.) order dated 31.01.2012, it has been corrected and the excess amount paid has been ordered to be recovered.

10. Mr. Katyal submitted that the controversy involved has been comprehensively dealt with by this Tribunal in **Amarendra Nath Misra & others v. Union of India & others** (O.A. No.1586/2010) decided on 06.11.2017. He stated that the reliefs claimed by the applicants are in the nature of seeking 'one rank one pension'.

11. I have considered the arguments of learned counsel for the parties and have perused the records.

12. It is not in dispute that the applicant, Mr. Balbir Singh Ahuja, retired on 10.06.1987, i.e., prior to the upgradation of pay scale of the post of Member, ITAT vide order dated 06.10.1999. It is settled law that an earlier retiree cannot get the benefits of upgradation of the pay scale in the subsequent years, as is the case in hand. Hence, granting him pension with reference to the upgraded pay scale of the post of Member, ITAT in terms of order dated 06.10.1999 was an inadvertent mistake. The respondents have much belatedly detected that mistake and accordingly, vide Annexure A-1 (colly.) order dated 31.01.2012, have tried to rectify the mistake. However, in this regard, it is to be noted that the applicant never indulged into any kind of misrepresentation in securing the pension at a higher rate. The mistake of granting him higher pension is entirely attributable to the

respondents. The Hon'ble Supreme Court in **State of Punjab & others etc. v. Rafiq Masih (White Washer) etc.** (Civil Appeal No.11527/2014 with connected Appeals) decided on 18.12.2014, on the issue of recovery, has laid down the following principles:-

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

13. At the same time, it would also not be in the interest of justice to allow the applicants to get the benefits of higher pension, to which Mr. Balbir Singh Ahuja was legally entitled to.

14. In the conspectus, I dispose of this O.A. in the following terms:-

(i) The legal validity of Annexure A-1 (colly.) order dated 31.01.2012 is upheld. Since the applicant, Mr. Balbir Singh Ahuja has expired, his legal heirs shall get his pensionary benefits from this month, i.e., 01.03.2018.

(ii) No recovery shall be made towards any excess pension paid to the deceased and if any amount has already been recovered, the same shall be refunded to the applicants (legal heirs) within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

**(K.N. Shrivastava)
Member (A)**

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