

**Central Administrative Tribunal
Principal Bench**

OA No.2598/2014

Reserved on: 18.09.2015

Pronounced on: 04.12.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman

N. V. V. Char S/o N. S. V. Char,
Commissioner (ER) [Retired],
Ministry of Water Resources,
R/O A-12-C, Munirka, DDA Flats,
New Delhi-110067.

... Applicant

(By Advocate : Shri B. K. Berera)

Versus

1. Union of India through
Secretary, Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
2. Secretary,
Department of Pension and Pensioners' Welfare,
Lok Nayak Bhawan (3rd Floor), Khan Market,
New Delhi-110003.

... Respondents

(By Advocate: Ms. Avinash Kaur)

O R D E R

In the instant Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by the order of the respondents dated 02.07.2015 rejecting his representation for revising/re-fixing his pension *inter alia* on the basis of the office memorandum dated 02.09.2008 (Annexure A-9) issued on the recommendations of the Sixth Central Pay Commission.

2. Heard Shri B. K. Berera, learned counsel for the applicant and Ms. Avinash Kaur, learned counsel appearing for the respondents.

3. It appears that the applicant, after completion of 33 years of service on attaining the age of superannuation retired from the post of Commissioner (ER) under the Ministry of Water Resources, w.e.f. 30.06.1997. At the time of retirement, he was drawing pay in the grade of Rs.18400-500-22400. He was also entrusted with the additional charge of the post of Vice-Chairman, Brahmaputra Board vide office order No.1139/96 dated 18.12.1996 w.e.f. 01.03.1996 to 31.12.1996 or till a regular incumbent joined the post, whichever was to be earlier. However, he continued as Vice-Chairman, Brahmaputra Board till 20.03.1997 in the grade of Rs.22400-525-26000. When the applicant was relinquished from his additional charge as Commissioner after joining as regular Chairman and Vice Chairman w.e.f. 20.03.1997, he thereafter retired on 30.06.1997 on attaining the age of superannuation. Consequently, his pension and other retiral benefits were calculated on the basis of ten months' average emoluments, as per rules and practice in vogue at that point of time, and his pension was accordingly fixed at Rs.10,772/-. Copy of the PPO and fixation sheet is enclosed as Annexure A-3 to the Application.

4. Shri B. K. Berera, learned counsel for the applicant submitted that prior to the recommendations of the 6th Central Pay Commission, pension used to be fixed on an average of ten months' pay as per rules, and accordingly the applicant's pension was fixed on the basis of the pay

scale drawn as Vice-Chairman, Brahamputra Board in the then grade of Rs.22400-525-26000 for 6 months and 20 days, and 3 months and 10 days as Commissioner in the grade of Rs.18400-500-22400, and his pension was accordingly fixed at Rs.10,772/-. The Ministry of Personnel, Public Grievances and Pension (Department of Pension and Pensioners' Welfare) came out with an office memorandum dated 01.09.2008 in implementation of the Government's decision on the recommendations of the 6th Central Pay Commission - revision of pension of pre-2006 pensioners/family pensioners etc. (Annexure A-4). Relying on clause 4.2 of the aforesaid office memorandum, it is urged that the pension cannot be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which an employee had retired. He submitted that since the applicant's pension was fixed on the basis of ten months' average salary drawn as per rules and the 5th Central Pay Commission, it was required to be re-fixed as per clause 4.2 of the aforesaid OM dated 01.09.2008 whereunder in no case the pension could be less than 50% of the minimum pay drawn at the time of retirement. The applicant, therefore, sent representation on 27.05.2010 followed by reminders. He again made a detailed representation on 07.12.2011 with the request to re-fix his pension keeping in view the revised pay band Rs.67000-79000 corresponding to the pre-revised scale Rs.22400-525-26000 in respect of the period of 6 months 20 days when he discharged the duties and functions of Vice-Chairman and Chairman of the Board, and for the remaining 3 months and 10 days in the pay band of Rs.37400-67000 (pre-

revised scale Rs.18400-500-22400) with two increments for 10 months' average. It is submitted that after implementation of Sixth Pay Commission Report, though the pension of the applicant was fixed at Rs.24,345/- on 10.03.2012 but without taking into account his pension on the basis of revised pay scale of Rs.67000-79000 for 6 months 20 days and Rs.37400-67000 for 3 months 10 days.

5. The learned counsel for the applicant submitted that the respondents thereafter revised the order by giving the pension of Rs.27,350/- w.e.f. 24.09.2007 on the basis of aforesaid revised pay band of Rs.37400-67000, but they did not take into account the higher pay scale of Rs.22400-525-26000 (Rs.67000-79000) for 6 months 20 days. The aggrieved applicant immediately submitted an application on 12.05.2014 with the request to revise the pension on 10 months' average basis, which was rejected by the impugned order dated 02.07.2014. The learned counsel argued that as per rule 34 of CCS (Pension) Rules, 1972, the pension is to be fixed on the basis of 10 months' average salary paid at the time of retirement. The contention is that since the pension to be fixed as per revised scale given on the basis of Sixth Pay Commission recommendations w.e.f. 01.01.2006 on the basis of 10 months' average is now more beneficial to the applicant, the same cannot be denied to the applicant.

6. On the other hand, the stand of the respondents is that consequent to acceptance of the recommendations of the Sixth Pay

Commission, the Department of Pension and Pensioners' Welfare issued two office memoranda - one for revision of pension of pre-2006 pensioners/family pensioners etc., and the other for regulating pension/gratuity/commutation of pension/family pension/disability pension/ ex gratia lump-sum compensation to Government servants who retired/died in harness on or after 01.01.2006. Learned counsel for the respondents submitted that the applicant's pension could be revised in terms of the OM dated 01.09.2008, which *inter alia* provides that the pre-revised pension based on the average emoluments for the last ten months before retirement would be revised w.e.f. 01.01.2006 by adding Dearness Pension, Dearness Relief and Fitment Benefit @ 40%. It is submitted that his pension was revised in accordance with the aforesaid OM dated 01.09.2008. He also placed reliance on para 4.1 and para 4.2 of the OM dated 01.09.2008 which provides as under:

"4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-

- i. The existing pension/family pension.
- ii. Dearness Pension, where applicable.
- iii. Dearness Relief upto AICPI (IW) average index 536 (Base Year 1982=100) i.e. @24% of Basic Pension/Basic Family Pension plus dearness pension as admissible vide this Department O.M. No.42/2/2006-P&PW(G) dated 5.4.2006.
- iv. Fitment weightage @ 40% of the existing pension/family pension.

Where the existing pension in (i) above includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006."

"4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty per cent 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 per cent of the minimum of the revised pay scale."

The learned counsel argued that the applicant's pension has accordingly been revised after taking into account the average emoluments of the different posts held during the last ten months before retirement, which has been calculated and revised to Rs.24,345/- w.e.f. 01.01.2006 as per OM dated 01.09.2008. It is further submitted that his pension was again revised to Rs.27,350/- w.e.f. 24.09.2012 pursuant to the DP&PW OM dated 28.01.2013. The submission, therefore, on behalf of the respondents is that OM dated 01.09.2008 does not provide for re-fixing the pension by taking into account the average pay/emoluments, and as such there is no infirmity or illegality in the revision/re-fixation of the pension of the applicant.

7. I have considered the submissions and also gone through the pleadings and documents enclosed thereto by the parties.

8. The short grievance of the applicant, as appears from the pleadings of the parties, is that he drew higher scale of Rs.22400-525-26000 for a period of 6 months and 20 days while officiating as Vice Chairman, which was replaced by the 6th CPC scale of Rs.75500-80000, 50% of the minimum of which becomes Rs.37,750/-, benefit of which should have been given to him while fixing his pension, which was not extended to him while revising his pension. The submission of the applicant, therefore, is that since he officiated on the post of Vice-Chairman for a period of 6 months and 20 days in the pay scale of Rs.22400-525-26000, which was replaced by the 6th CPC scale of Rs.75500-80000/-, the respondents ought to have calculated his pension by applying the formula given in para 4.2 of the OM dated 01.09.2008 in the replacement scale of Rs.75500-80000/-, and in this event his pension would have been fixed at Rs.37,750/-. In view of the submission, the only question which falls for consideration is as to whether the minimum pension of the applicant will be fixed on the higher scale of Rs.22400-525-26000 while officiating as Vice-Chairman or the scale of Rs.18400-22400 which he was drawing at the time of retirement, i.e., 30.06.1997.

9. Admittedly, the applicant is a pre-01.01.2006 retiree. His pension was fixed based on 10 months' pay actually drawn, including both in his substantive grade, and the higher pay drawn as Vice Chairman, and thereafter his pension was fixed. The OM dated 01.09.2008 read with OM dated 28.01.2013 stipulates that for pre-01.01.2006 retirees the pension will

be re-worked as per the formula given in para 4.1 of the OM dated 01.09.2008 referred to hereinabove, with the further stipulation in the OM dated 28.01.2013 that in case the pension worked out thus is less than 50% of the minimum of the 6th CPC scale corresponding to the pre-revised scale, then the incumbent would draw at least 50% of the minimum of the revised scale. In this case, since he retired from the pay scale of Rs.18400-22400, as per the chart enclosed with the OM dated 28.01.2013, his 6th CPC replacement scale would be Rs.37400-67000 with Grade Pay Rs.10,000/-. Therefore, the minimum of the revised 6th CPC scale becomes Rs.54,700/- and the 50% of the same comes to Rs.27,350/-, which pension has been fixed by the respondents in the case of the applicant. The short issue is that once his pension has been fixed as a pre-01.01.2006 retiree based on ten months' average salary, that chapter is closed. The 6th CPC dispensation only is to revise the pension as per the formula given in para 4.1 of the OM dated 01.09.2008. Therefore, for the purpose of OM dated 01.09.2008 and dated 28.01.2013, 50% of the minimum of the pay would be of the corresponding scale in the 6th CPC, and that is exactly what the respondents have given to the applicant. There is no scope of re-opening the ten months' average pay afresh, and it is beyond the scope of both the circulars dated 01.9.2008 and 28.01.2013. Reliance on behalf of the applicant on the OM dated 02.09.2008 is misplaced as the same would be applicable only in the case of employees who retired after 01.01.2006, whereas the applicant had retired from service on 30.06.1997. para 3.1 of

the OM dated 02.09.2008 itself provides about the categories of retirees to which it applies. Para 3.1 of the aforesaid OM reads as under:

“DATE OF EFFECT

- 3.1 Save as otherwise mentioned in these orders, the revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.2006. Separate order have been issued in respect of employees who retired/died before 1.1.2006.”

Thus the OM dated 02.09.2008 since itself provides that it applies only to those who retired on or after 01.01.2006, it would have no application in the case of the applicant who had retired before the cut-off date provided in the OM. Rather his case would be governed by the OM dated 01.09.2008, noted above, para 4.2 of which provides that the fixation of pension would be on the basis of the pay scale from which the pensioner had retired, and since the applicant retired from the scale of Rs.18400-22400, minimum of which becomes Rs.54,700/- and the 50% of the same comes to Rs.27,350/-. In the circumstances, I am of the view that when any instrument or circular clearly provides that it is to be applied only in respect of a group of persons or class of people, the other group of persons or class of people, who are not identically placed, cannot, by stretching or adding words in the instrument or the circular, claim the benefit out of it. Thus, the applicant's pension has rightly been fixed by the respondents, and no interference is called for in this proceeding.

9. In view of the above, there is no merit in the claim of the applicant and thus, the same deserves to be rejected. The OA is accordingly rejected, but without costs.

(Syed Rafat Alam)
Chairman

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