

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2189/2016

Order Reserved on: 17.04.2018

Pronounced on: 20.04.2018

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

H.L. Mehta, 94 years,
Accounts Officer retired,
S/o late Ram Rakha,
R/o 61/12, 1st Floor,
Ashok Nagar, New Delhi-110018.

- Applicant

(By Advocate Shri A.K. Trivedi)

-Versus-

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block, New Delhi-110011.
2. The PCDA (P),
Draupdi Ghat, Allahabad (UP).

-Respondents

(By Advocate Shri Rajinder Nischal)

O R D E R

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(a) Declare the whole action of the respondents as illegal, unjust, arbitrary and discriminatory in not fixing the pension of the applicant correctly right from 1.1.1986 by merging the graded relief to the notional pension, consequently leading to wrong fixation of pension wef 01/01/1996 and 01/01/2006 respectively.

(ii) Direct the respondents to re-calculate and fix the pension of the applicant correctly by granting the graded relief of Rs.538/- wef 01/01/1986 and the applicant may be entitled for arrears of his pension alongwith penal interest @18% till realization of dues etc.”

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

2.1 The applicant was appointed as an Auditor on 22.12.1941. He was promoted as Accounts Officer w.e.f. 12.02.1980 and superannuated from service on 01.08.1980. His pension was fixed as per rules. Pursuant to the implementation of the 4th Central Pay Commission (CPC) recommendations w.e.f. 1.1.1986, his pension was revised to Rs.1225/- per month w.e.f. 1.1.1986 considering his notional pay as Rs.2450/-. The applicant claims that in terms of the Annexure A-2 Department of Pension and Pensioners' Welfare (DP&PW) OM dated 03.03.1986, he was entitled to graded relief of Rs.538/- which was to be merged with his pension of Rs.1225/- w.e.f. 1.1.1986. It is stated that this non-merger of the graded relief has affected his pension throughout. He has made several representations to the respondents but there has been no action. Accordingly, he has filed the instant OA praying for the reliefs as indicated in para-1 supra. The applicant has relied on the judgment of the Hon'ble Supreme Court in the case of **P.N. Ramchandran v. State of Kerala**, [SLJ 2004 (1) SC 229], in which it is held that the employees should not suffer due to any administrative lapse. It is

thus contended that non-merger of the graded relief is an administrative lapse and the applicant should not be made to suffer on account of that.

3. Pursuant to the notices issued, the respondents entered appearance and filed the reply in which broadly they have averred as under:

3.1 In terms of Rule 49 (2) (a) of CCS (Pension) Rules, 1972, in case of a Government servant retiring after completing qualifying service of not less than 33 years, the amount of pension shall be calculated at 50% of average emoluments of last ten months basic pay. Accordingly, the applicant's pension has been fixed at Rs.945/- per month w.e.f. 01.08.1980, which was continued till 31.12.1985. After the implementation of the 4th CPC w.e.f. 1.1.1986, his pension was revised to Rs.1131/- per month. Thereafter in terms of the DP&PW OM dated 10.02.1988 his notional pay was fixed at Rs.2450/- per month as on 01.01.1986 and accordingly his notional pension has been fixed at Rs.1225/- per month as on that date.

3.2 After the implementation of the 5th CPC recommendations, in terms of the DP&PW OM dated 27.10.1997 in respect of pre-1996 retirees, the pension of the applicant was fixed at Rs.3701/-per month. However, in terms of OM dated 11.05.2011, which *inter alia*, provided that pension of all pensioners irrespective of their date of retirement shall not be less

than 50% of the minimum of the corresponding scale as on 01.01.1996, his pension was re-fixed at Rs.3725/- (50% of minimum of corresponding pay scale of Rs.7450-225-11500).

3.3 After the implementation of the 6th CPC recommendations his pension was revised to Rs.9230/ per month in terms of DP&PW OM dated 28.01.2013 and thereafter in terms of the DP&PW OM dated 04.08.2016, implementing the 7th CPC recommendations, his pension was further revised to Rs.23722/- per month.

3.4 It is further stated that inclusion of the graded relief for consolidation of pension consequent upon award of 4th CPC, was withdrawn vide DP&PW OM dated 16.04.1987 and hence his claim for fixing his pension by merging the graded relief in the pension could not have been accepted.

4. The applicant has filed a rejoinder to the reply filed on behalf of the respondents in which he has, more or less, reiterated his averments in the OA.

5. With the completion of pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 17.04.2018. Arguments of Shri A.K. Trivedi, learned counsel for the applicant and that of Shri Rajinder Nischal, learned counsel for the respondents were heard.

6. I have given due consideration to the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. It is noticed that the applicant's pension has been fixed in accordance with the Central Pay Commissions' recommendations from time to time. The applicant's main claim is that his pension should have been fixed by including the graded relief of Rs.538/- to his pension in the year 1986 and accordingly his pension should have been revised from time to time. The respondents in their reply have clearly mentioned that vide OM of DP&PW dated 03.03.1986 the graded relief of Rs.538/- was required to be added to the pension but that OM had been withdrawn by the Government vide DP&PW OM dated 16.04.1987.

7. In this view of the matter, I do not find any defect or discrepancy in the fixation of pension of the applicant from time to time. Accordingly, the OA is dismissed having been found devoid of any merit.

8. No order as to costs.

K.N. Shrivastava)
Member (A)

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