

**Central Administrative Tribunal
Principal Bench**

OA No. 3710/2012

Order reserved on: 09.08.2016
Order pronounced on: 08.09.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

1. Pro-rata Pensioners Association (Regd.)
Through its General Secretary,
Sh. Sunil Kumar Sharma,
B-37, Satyawati Nagar,
Ashok Vihar, Phase-3,
Delhi-110052.
2. Sh. Krishan Pal Tyagi,
S/o Late Sh. Chhidda Singh,
R/o A-1/582, Sector-6,
Rohini, Delhi-110085.
3. Sh. Prem Pal Singh,
S/o Sh. Attar Singh,
R/o H.No. F-43, Vijay Vihar,
Phase-I, Delhi-110085.

- Applicants

(By Advocate: Mr .M.K. Bhardwaj)

Versus

1. The Principal,
Controller of Communication Accounts,
Department of Telecommunications,
Ministry of Communications and I.T.,
Department of Telecommunications Building,
Prasad Nagar,
New Delhi-110005.
2. The Secretary,
Department of Telecommunications,
Ministry of Communications and I.T.,
Government of India,
Sanchar Bhawan, 20, Ashoka Road
New Delhi.

3. The Secretary,
Ministry of Personnel,
Public Grievances & Pension,
Department of Pension & Pensioner Welfare,
Lok Nayak Bhawan,
New Delhi-110003.
4. The Secretary,
Ministry of Finance,
Government of India,
North Block, New Delhi.

- Respondents

(By Advocate: Mr. Hilal Haider)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The present OA has been filed by the Pro-rata Pensioners Association with two other pro-rata pensioners, who are ex-employees of respondent no.2. The members of the aforementioned Association and the other two applicants (hereinafter referred to as the applicants) were permanent employees of Department of Telecommunication (DOT), who were transferred to MTNL on absorption basis. At the time of absorption, the applicant had opted for proportionate pension admissible under Rule 49 (2) of CCS (Pension) Rules. The applicants, who were absorbed in the MTNL with effect from 01.01.1998, were entitled to a minimum pension of Rs.1275 p.m. Following the implementation of the recommendations of the 6th Pay Commission the minimum pension was raised even for those who had retired after completing qualifying service of not less than 10 years was revised to Rs.3500 p.m. The applicants herein

have got that benefit w.e.f. 01.01.2006. The grievance of the applicants arises from the denial of their dues in terms of clarification issued by the Ministry of Finance, respondent no.4 on 01.03.2004 in which 50% pension was merged in the basic pension effective from 01.04.2004. The prayer of the applicants is that they should be given the benefit of revision pension with merger of 50% of the Dearness Relief (DR) with the basic pension w.e.f. 01.04.2004 to 31.12.2005.

2. Learned counsel for the applicant submitted that in the OM dated 01.03.2004 the respondents had decided to merge the 50% of existing DR with the basic pension. The respondents have not revised the pension of the applicants, who had retired before 01.04.2004, taking the plea that since re-employed or absorbees in a PSU are not entitled to DR the question of its merger would not arise. This has drawn a line between the retirees of pre-01.04.2004 period and that of the period 01.04.2001-31.12.2005. The OM dated 01.03.2004 does not intend to discriminate between the two categories of pensioners. The OM went to the extent of treating 50% of pay of retirees of post 01.04.2004 period as basic pay for the purpose of calculating pension, as a special dispensation. The respondents have intentionally mis-interpreted the OM and denied its benefit to the applicants. For the sake of ease of reference the OM dated 01.03.2004 is reproduced below:

“Subject: Merger of 50% of Dearness Allowance/Dearness Relief with basic pay/pension to Central Government employees/pensioners w.e.f. 1.4.2004.

The Fifth CPC in para 105.11 of their report had recommended that ‘DA should be converted into Dearness Pay each time the CPI increase by 50% over the base index used by the Pay Commission’.

2. This recommendation of Fifth CPC has been considered and the President is pleased to decide that, with effect from 01/04/2004, DA equal to 50% of the existing basic pay shall be merged with the basic pay and shown distinctly as Dearness Pay (DP) which would be counted for purposes like payment of allowances, transfer grant, retirement benefits, contribution to GPF, Licence fee, monthly contribution to CGHS, various advances, etc. The entitlements of LTC, TA/DA while on tour and transfer and government accommodation shall, however, continue to be governed on the basis of the basic pay alone without taking into account Dearness Pay. In case of existing pensioners, Dearness Relief equal to 50% of the present pension will, w.e.f. 01/04/2004, be merged with pension and shown distinctly as Dearness Pension. Dearness Allowance/Dearness Relief converted into Dearness Pay/Dearness Pension respectively would be deducted from the existing rate of Dearness Allowance/Dearness Relief.

3. To ensure that pensioners retiring between 01.04.2004 to 31.01.2005 do not face any loss in fixation of pension, as a special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay for purposes of computation of pension in respect of basic pay received by them prior to 01.04.2004. Consequently, element of dearness pension will exist only for pensioners retired/retiring from Government of India up to 31.03.2004.

4. Insofar as the persons serving in the Indian Audit & Accounts Department are concerned, these orders issue after consultation with the Comptroller & Auditor General of India.”

3. The para 2 of this OM does not make any distinction between pre- and post- 01.04.2004 retirees. It, therefore, follows that the pensioners who retired prior to 01.04.2004 were also eligible for revised pension w.e.f. 01.04.2004 at least for the revised minimum pension of Rs.1913. He further stated that the applicants being absorbees of a PSU are not claiming dearness

relief on pension, and therefore, the stand of the respondents that in terms of Rule 55 (A) of CCS Pension Rules, the applicants are not entitled for Dearness Pay (DP) is totally misplaced.

4. Learned counsel for the respondents, on the other hand, forcefully argued that applicants are not entitled to any DR or DP on the basic pension as per the Rule 55 (A) of CCS Pension Rules. Once the rules do not permit DR after absorption in MTNL on 01.01.1998, the question of revising their pension in terms of the OM dated 01.03.2004 did not arise. The Rule 55 (A) was absolutely clear that a pensioner re-employed in a Central or State Government or permanently absorbed in a Corporation shall not be eligible to draw DR on pension during the period of such re-employment. He further referred to the clarifications issued vide OM No. 45/1/04-P&PW(G) dated 27.01.2005 which clarified that the minimum pension of the employee was not to be enhanced to Rs.1913. He also referred to Rule 33 of CCS Pension Rules, 1972 arguing that the emolument for the purpose of calculating is only basic pay. The Rule 49 of the CCS (Pension) Rule, 1972 also does not mention that the minimum pension should be Rs.1913 for pensioners who were re-employed in a PSU.

5. We have heard the learned counsel for the parties and perused the record. The prayer of the applicants is confined to

the revision of pension, without any DR on the revised pension, for the period from 01.04.2004 to 31.12.2005 during which the 50% of the DR was converted into DP and was to be counted for the purpose of enhanced pension with revised minimum of Rs.1913 p.m. The question before us is whether the applicants are entitled to the benefit of merger of 50% of DR in terms of the OM dated 01.03.2004 when the applicants were not getting any DR being absorbees of a PSU.

6. We find force in the argument of the applicants that the OM dated 01.03.2004 merges 50% DR with the existing pension without making any distinction with regard to the status of the pensioners i.e. whether or not he was re-employed or absorbed after retirement from the Central Government. Only in the OM dated 27.01.2005 the respondents by way of a clarification had taken a view that re-employed/absorbees were not eligible for Dearness pension. In another clarification dated 01.02.2006 the respondents have stated that the existing pensioners as on 01.04.2004 were entitled to basic pension plus DP (equal to 50% of the basic pension) plus Dearness Relief on the sum of the two. Once 50% DR has been converted into DP and merged with the basic pension for the purpose of revised pension, its benefit cannot be denied on the basis of a specific cut off date, i.e., 01.04.2004, which the respondents have done. It amounts to creating further classification among the pensioners, which was

frowned upon by the Hon'ble Supreme Court in **D.S. Nakara vs. Union of India**, (1983) 1 SCC 305. The relevant portion of the judgment is reproduced below:

“9. Is this class of pensioners further divisible for the purpose of 'entitlement' and 'payment' of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual Government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the Third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual Government servant happens to fall. In other words, all Government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Art. 14?

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29. Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible, purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal

construction and the Courts may not so interpret such statute as to render them inane (see American Jurisprudence 2d. 881).

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

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65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ext. P-1, the words:

"that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date"

and in Exhibit P-2, the words:

"the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date."

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.”

7. The Hon’ble Delhi High Court in WP (C) no.6771/2014 dated 30.09.2014 – **Council of Scientific & Industrial Research &ors.vs. Dr.Anang Pal and others** also stated the same principle in the following words:

“4. On merits, the Tribunal observed that Senior Hindi Officers promoted between 30.01.2003 and 31.12.2005 had been granted lower pay scales, when compared to those promoted before or after the intervening period as aforesaid. Thus, the petitioner had sought to make distinction on the basis of dates of promotion, and different class of Senior Hindi Officers were created without any rationale. The classification had no nexus with the objects sought to be achieved. The Tribunal held that the cut-off date of 30.01.2003 itself was arbitrary, based on the fortuitous circumstances of the governing body meeting being held just prior to that date. The Tribunal held:

“While the CSIR were well within their rights to decide whether to grant a particular pay scale to the applicants or not, their action in dividing the Senior Hindi Officer into two classes by allowing those promoted before 30.01.2003 to continue to enjoy the higher pay scale of Rs.10000-15200 is unsustainable.

x x x x

8. On merits, the petitioner could not defend the classification sought to be made amongst the Senior Hindi Officers on the basis of the dates of promotion, when the respondent maintained the higher pay scale of Rs.10000-15200 in respect of those Senior Hindi Officers who were appointed prior to 02.08.2000 and after 30.01.2003. There was no justification to grant the lower pay scale of Rs.8000-13500 to those promoted in the said period. There is no rational basis for this classification, as all officers in the cadre of Senior Hindi Officers are performing the same functions and discharging the same responsibilities under

the same employer. As held by the Tribunal, there is no basis for fixing the cut off dates.”

8. It is undisputed that following the aforementioned merger of the 50% of DR as DP with the basic pension, the minimum pension was revised to Rs.1913 p.m., which is also clear from the OM dated 27.01.2005. Once the ‘minimum pension’ has been revised, it is no more related to the question of merger of 50% of DR. The pension of any one retiring after completion of 10 years of service on pro-rata or full pension will be subject to this minimum. The applicants being pro-rata pensioners cannot be excluded from the applicability of the minimum pension. This logic is further reinforced by the fact pension of the applicants has already been revised to the stage of minimum pension of Rs.3500/- from 01.01.2006 following the recommendations of the 6th CPC.

9. Viewing from another angle it can be noted that OM dated 01.03.2004 contained a special provision for the pensioners retiring between 01.04.2004 to 31.12.2005 stating that Dearness allowances equal to 50% of the basic pay will be treated as basic pay for the purpose of computation of pension in respect of basic pay received by them prior to 01.04.2004. This provision is not predicated to future re-employment or absorption of the employee in any PSU etc. A retiree will be entitled to higher pension irrespective of the fact whether he takes up a job later or gets re-

employed or absorbed. If we accept the argument of the respondents that the revised minimum pension is not applicable to the absorbees of a PSU, that will contradict the principle behind the aforementioned special dispensation of not linking pension to future re-employment. The respondents therefore, as laid down in **D.S. Nakara** (supra), cannot subject the minimum pension of the pre- 01.04.2004 retirees to their status of absorbees of a PSU and artificially create separate class for giving a different treatment.

10. On the basis of the OM dated 01.03.2004, the merger of 50% of DA/DR with basic pay/pension w.e.f. 01.04.2004 can also be viewed as an upward revision of pay in the interim before a detailed consideration by the next Pay Commission. In such view of the situation the applicants may not be entitled to DR, but the benefit of revision of pension on account of any upward revision of the basic pay of the post has to be given to the applicants subject to the minimum pension of Rs.1913. The respondents have no justification for denying the benefit of the same to the applicants, who were drawing proportionate pension prior to 01.04.2004.

11. Regarding the reliance of the respondents on the Rule 55 (a) of CCS Pension Rules we find that the rule disentitles an employee from getting DR on pension only during the period of re-employment. The applicants in this OA retired from service from

MTNL in 1998. At the time of merger of 50% of DR with basic pay in 2004 they were not “re-employed”. The aforementioned rule therefore, will not be applicable to them. For ease of reference the Rule 55 (A) of CCS Pension Rules is reproduced below:

“55-A. Dearness Relief on Pension/ Family Pension

- (i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.
- (ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw Dearness Relief on pension/family pension during the period of such re-employment.”

12. In the light of the foregoing discussion and the law the OA is allowed. The respondents are directed to revise the pension of the applicants in accordance with OM dated 01.03.2004, subject to a minimum of Rs.1913/- per mensem for the period 01.04.2004 to 31.12.2005 and pay the arrears to the applicants within a period of three months from the date of receipt of a copy of this order. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

‘sd’

September 8, 2016