

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.4013/2016

Reserved on: 08.03.2018
Pronounced on: 21.03.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Sh. Anil Kumar Chugh (Aged about 69 years)
s/o late Sh. Shanker Dass Chugh,
R/o F-289, First Floor,
Vikaspuri, New Delhi – 110 018.
Group-C as SS (O).

...Applicant

(By Advocate: Sh. T.D. Yadav)

Versus

1. Union of India through Secretary,
Ministry of Communication & IT
Department of Telecommunication
O/o the Pr. CCA Delhi Region,
DOT Building, Prasad Nagar,
New Delhi- 110 005.

2. The Sr. CAO,
O/o CCA Delhi Region,
Prasad Nagar,
New Delhi – 110 005.

3. The Senior Account Officer (Pension),
Ministry of Communication & IT,
Department of Telecommunication,
O/o the Pr. CCA Delhi Region,
DOT Building, Prasad Nagar,
New Delhi- 110 005.

...Respondents

(By Advocate: Sh. Subhash Gosain)

ORDER

The applicant has filed this Original Application challenging wrong fixation of his pension w.e.f. 01.11.1998 and 01.01.2006 at Rs.2894/- & Rs.6541/- respectively vide impugned order dated 15.02.2016 and further wrong

revision of his pension at Rs.6750/- w.e.f. 01.01.2006 vide order dated 19.08.2016. The applicant has also prayed for a direction to the respondents to fix *pro rata* pension at Rs.3250/- (50% of his last basic pay drawn by him at Rs.6500/-) w.e.f. 01.11.1998 and at Rs.8295/- w.e.f. 01.01.2006. He has also prayed for consequential benefits like revision of pension/family pension and arrears thereof with interest @ Rs.18% per annum thereon.

2. Brief facts of the case are that the applicant was initially appointed as Sorter RMS in New Delhi on 26.10.1968 and was transferred to Department of Telecommunication [hereinafter referred to as DoT] as Time Scale Clerk w.e.f. 01.01.1969. The applicant was subsequently promoted as Section Supervisor Operational (SSO) on 02.01.1995. It is contended that officers and staff including the applicant working in DoT at Delhi & Mumbai were transferred en-masse on deemed deputation basis to manage and control telecom services of the newly established organization called Mahanagar Telephone Nigam Limited [hereinafter referred to as MTNL] and were absorbed there w.e.f. 01.11.1998 deemed to have retired from government service w.e.f. 31.10.1998. The applicant submits that at the time of absorption in MTNL, the

absorbed employees were required to exercise one of the following two options for pensionary benefits:-

- (i) *Pro-rata pensionary benefits; and*
- (ii) *Pensionary benefits as per Govt. rules on the basis of combined service rendered in Government and MTNL.*

The applicant opted pro rata pension w.e.f. 01.11.1998 and last pay drawn by him was Rs.6500/- in the pay scale of Rs.5000-150-8000/-. It is the contention of the applicant that his pro rata pension was wrongly fixed by the Controller of Communication Accounts (CCA), Delhi Region at Rs.2894/- on the basis of average emoluments of Rs.6365/- without Dearness Relief (DR), instead of Rs.6500/-, on the ground that he has rendered less than 33 years of service as per prevalent rules in existence.

3. The applicant submits that after implementation of the recommendation of VIth Central Pay Commission [hereinafter referred to as VIth CPC], his pay scale was revised to Rs.9300-34800 + Grade Pay of Rs.4200/- and accordingly his pension was revised from Rs.2894/- to Rs.6541/- w.e.f. 01.01.2006. Subsequently, OM dated 01.09.2008 was issued by the DOP&T relating to revision of pension of pre 2006 pensioners. The relevant portion of the above OM is reproduced hereunder:-

“4.2. That the fixation of pension will be subject to the provision that the revision pension in no case, shall be

lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the prescribed pay scale from which the pensioner had retired in the case of HAG + and above scale this will be 50% of the minimum of the revised pay scale.”

The DOP&T issued another OM dated 03.10.2008 clarifying that pension will be reduced pro rata where the pensioner had less than the maximum required service of 33 years for full pension. However, the DOPT issued yet another OM dated 13.02.2013 regarding revision of pension of pre-2006 pensioners clearly providing that in case the pension/family pension in respect of pre-2006 pensioners has not been revised w.e.f. 01.01.2006, the same may also be revised for the period upto 23.09.2012 in terms of order dated 01.09.2008 and subsequent orders thereto and for the period from 24.09.2012 in terms of order dated 28.01.2013. The DOP&T issued yet another OM dated 30.07.2015 regarding revision of pension of pre 2006 pensioners in light of various decisions of the Tribunal, High Court and Hon'ble Apex Court.

4. The applicant submits that when his pension was not being fixed correctly, he preferred representations dated 07.12.2015, 30.12.2015 and 01.02.2016. Meanwhile, DOP&T further issued O.M. dated 06.04.2016 providing delinking or revised pension from qualifying

service of 33 years. Relevant portion of the said OM reads as under:-

“6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Accordingly, Para 5 of this Department’s OM of even number dated 28.01.2013 would stand deleted. The arrears of revision pension would be payable with effect from 01.01.2006.”

5. Consequent upon the above OM of the DOP&T, the applicant made representation on 03.09.2016 stating therein that he is entitled to get his basic pension without DR fixed at Rs.3250/- w.e.f. 01.11.1998 and at Rs.8295/- w.e.f. 01.01.2006. As the applicant’s request for fixation of correct pension as per various OMs of the DOP&T has not yielded any response, the applicant has approached this Tribunal by way of the instant OA for redressal of his grievance for fixation of his pension as per para 4.2 of the DOP&T OM dated 01.09.2008.

6. The respondents have filed their written statement to the OA submitting that they have determined the pro rata pension of the applicant as per the existing rules prevailing at the time of his deemed retirement from government service. They have also submitted that as per DoP&T OM

dated 27.10.1997, pension of a government employee is to be calculated at 50% average emoluments in all cases subject to a minimum of Rs.1275/- and maximum upto 50% of highest pay in Government. The respondents submit that admittedly the applicant's last pay at the time of retirement was Rs.6500/- but since he has not completed 33 years of service required to earn full pension, his average emoluments at the time of retirement has been computed at Rs.6365/- and, therefore, his pension has rightly been fixed at Rs.2894/- w.e.f. 01.11.1998 and at Rs.6750/- w.e.f. 01.01.2006 vide the orders impugned in this OA.

7. Heard the learned counsel for the parties and have perused the material on record.

8. I have carefully gone through the order of the Hon'ble High Court of Delhi in **S.A. Khan & Anr. Vs. Union of India & Ors.** [WP(C) No.8012/2013 and WP(C) No.8056/2013 decided by a common order dated 07.05.2015], relied upon by the applicant. I consider it appropriate to reproduce the issues framed by the High Court in paragraphs 2 & 3, which read thus:-

"2. In W.P.(C) No.8056/2013, prayer has also been made to quash the letter dated October 01, 2012 under which the pension of the petitioner was re-fixed to his disadvantage with a direction that his pension be

refixed as per para 4.2 of the Office Memorandum dated September 01, 2008. Similarly, in W.P.(C) No.8012/2013, the petitioners have prayed that letters whereby their pension was reduced be quashed and their pension be re-fixed as per para 4.2 of the Office Memorandum dated September 01, 2008. The petitioners have also prayed that the amounts recovered from their pension be directed to be refunded with interest.

3. Thus, the issue which arises for consideration is whether the decision to classify the pensioners in two classes : pre January 01, 2006 pensioners and post said date pensioners is a reasonable classification, while according full pension to post January 01, 2006 pensioners who have rendered 20 years" service but pro-rata reducing the same for the pre January 01, 2006 pensioners, which stands the scrutiny of Article 14 of the Constitution of India; since the Article while permitting classification warrants a rational nexus to be established keeping in view the object and thereby resulting in two classes forming. It is trite that equality has to be amongst the members of the same class and not amongst members of different classes. Thus, it is the reasonableness of the classification which is in issue."

The High Court, after discussing the whole matter, eventually concludes in paragraphs 24, 25 & 26, which are reproduced hereunder:-

"24. Reverting to the facts of the instant case we find that the respondents have failed to show any nexus between the criteria with the object of the policy. To give benefit of full pension to those who have rendered 20 years service but have retired on or after January 01, 2006 but subject the pensioners who have retired on or before December 31, 2005 to a pro-rata cut in pension unless backed by a reasonableness of the criteria with the object sought to be achieved would render the cut-off date as an arbitrary criteria and thus liable to be quashed.

25. To summarize, the petitioners must succeed on two points. Firstly that the policy decision of the Government in the Office Memorandum dated September 01, 2008 to fix pension for all category of pensioners did not classify post and pre January 01, 2006 retirees and all were entitled to pension as per a common formula. Under the garb of clarification the Office Memorandum of October 03, 2008 followed by the Office Memorandum dated

October 14, 2008 and repeated in the Office Memorandum dated January 28, 2013 the cut-off date was inserted by an officer of the Government having no authority to cut down the beneficial policy decision notified on September 01, 2008. Secondly for the reason the cut-off date is arbitrary and foulds Article 14 of the Constitution of India.

26. The writ petitions are allowed. The Office Memorandums introducing the cut-off date and mandating that pre January 01, 2006 pensioners would have their pension fix by pro-rata reducing the same by such numbers of years they have rendered less service than 33 years are quashed. It is declared that the writ petitioners would be entitled to full pension post January 01, 2006 without any pro-rata cut therein. Pension deducted from the petitioners (after it was correctly fixed and paid but later on reduced and hence deductions made) shall be refunded as also the arrears paid within six weeks from today failing which the amount payable would bear simple interest @ 9% per annum reckoned six weeks hereinafter."

9. It is seen, from perusal of the record, that the only ground raised by the respondents in not fixing the correct pension of pre-2006 pensioners like the applicant as per the DOP&T OM dated 01.09.2008 was because of issuance of OM dated 03.10.2008 clarifying that pension will be reduced pro rata where the pensioner had less than the maximum required service of 33 years for full pension. It is also seen that these OMs of the DOP&T have been considered by the High Court in **S.A. Khan & Anr. Vs. Union of India & Ors.** (supra) and held that under the garb of clarification, OM dated 03.10.2008 followed by OM dated 14.10.2008 and repeated in OM dated 28.01.2013, the cut-off date was inserted by an officer of the Government having no authority to cut down the beneficial

policy decision notified on September 01, 2008 and, hence, the cut-off date is arbitrary and foulds Article 14 of the Constitution of India.

10. It is also seen that the coordinate Bench of this Tribunal has also taken the same view in an identical and similar case titled as ***Pratap Narain etc. V/s. Union of India & Ors.*** [OA No.1165/2011 with OA No.2165/2011 and OA No.246/2012 decided by a common order dated 21.04.2015]. The operative part of the decision is reproduced hereunder:-

“13. In view of the judgments of the Hon’ble Supreme Court in D.S. Nakara (supra), V. Kasturi (supra), T.S. Thiruvengadam (supra) and order of the Full Bench of the Tribunal in OA 937/2010 with OA 2101/2010 dated 20.11.2014, we are of the opinion that the prayer in the OAs is fully justified. We, therefore, quash and set aside the impugned orders dated 3.10.2008 and 19.03.2010 being violative of law laid down by the Hon’ble Supreme Court and direct the respondents 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. The respondents are also directed to modify/amend all relevant government orders/ letters/ notifications in accordance with the above decision. It is made clear that this parity of pension between pre and post-1.01.2006 pensioners (on the question of eligibility of minimum pensionable service of twenty years) would apply both as regards pension and family pension. The respondents are granted three monthstime from the date of receipt of this order for implementation of directions contained in this order.”

11. It is clear from the above discussion that the issue of creating any artificial distinction between pre-2006 and post-2006 retirees qua eligibility for full pension in terms of

qualifying service is fully settled by various judicial pronouncements as well as by circulars of DOP&T. It is, therefore, clear that a pensioner, who retired prior to 01.01.2006 and even though was having less than 33 years of service to his credit and was getting pro-rata pension, cannot be discriminated vis-à-vis a pensioner who retired after 01.01.2006 and is entitled to get full pension after putting in 20 years of service.

12. Given this legal position, it is appropriate to grant the applicant benefit of full pension from 01.01.2006 as it were applicable to any pensioner who retired after 01.01.2006.

13. The next question, however, is how do we treat the pension of the applicant from 01.11.1998 when he was deemed retired from Department of Tele-communication.

14. In 1998, his pension was fixed based on the rules prevailing at that point of time which provided for pro-rata pension, and since he had not put in statutory period of 33 years of service, his pension was fixed accordingly. In other words, he was not getting the benefit of full pension. He has continued to get pension from 01.11.1998 to 31.12.2005 on the basis of pro-rata pension. There is nothing in the rules or circulars or any judgments which may show that the benefit of 20 years qualifying service

should be made available to pre-2006 pensioners/retirees from the date they retired in terms of actual payment of pension. Therefore, it has to be seen whether the actual payment of pension made to the applicant between 01.11.1998 and 31.12.2005 has been done according to the extant rules or otherwise. I have carefully considered the interpretation of judicial pronouncements in this regard and it is difficult for me to conclude that judicial pronouncements lead to extending the benefit of full pension from the date of actual retirement in those cases where the retirement had taken place prior to 01.01.2006, e.g., in the instant case, the applicant had retired in 1998. So, does the interpretation of judicial pronouncements imply that his pension from 1998 should be re-calculated as full pension and not as a pro-rata pension? It is my considered view that none of the judicial pronouncements stipulate this. It is correct that the applicant would become entitled to get full pension from 01.01.2006 but whether the concept of full pension will apply w.e.f. 01.11.1998 does not seem to be in harmony and accord with the prevailing legal position.

15. The issue then is how does the applicant's pension really get fixed in this case?

16. In my view what needs to be done is to calculate the pension of the applicant on notional basis from the date of his deemed retirement from Department of Tele-communication i.e. 01.11.1998, when the pension was given to him, removing the pro-rata condition. In other words, his pension should be notionally calculated from 01.11.1998 as if he had put in the required number of service to get the benefit of full pension and this notionally arrived at pension may be calculated right upto 31.12.2005 and then from 01.01.2006 his pension should be fixed as the replacement pension for the pension notionally calculated for him for December, 2005. In this manner, he gets the advantage of Hon'ble Supreme Court rulings dispensing with any artificial distinction between pre-2006 and post 2006 pensioners/retirees.

17. In view of the above discussion, I dispose of this Original Application with the following directions:-

- (i) The applicant's pension may be fixed from the date when he was deemed retired from Department of Tele-communication not on pro-rata basis but on the basis of full pension **notionally**;
- (ii) Following this formula, the pension of the applicant may be calculated for December, 2005

and he should be given the replacement pension following the 6th Central Pay Commission's recommendations duly accepted by the Government from 01.01.2006 and further revision consequent upon the recommendations of the 7th Central Pay Commission. It is made clear that there will be no actual payment of arrears to the applicant between 01.11.1998 to 31.12.2005. However, the arrears of pension accruing to the applicant from 01.01.2006 shall be calculated and paid to him;

- (iii) The above exercise be completed within a period of four months from the date of receipt of certified copy of this order.
- (iv) There shall be no order as to costs.

(Uday Kumar Varma)
Member (A)