

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.4150/2017

Friday, this the 5th day of October 2018

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

Ajay Kumar Gangal
s/o Late Shri S S Gangal
age 61 years approx
Resident of 167, Neeti Bagh
Saushabad Road, Agra
Presently residing at
A-222, Sector 122
Noida
(Group C)

(Mr. K M Singh, Advocate)

..Applicant

Versus

1. Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi
(Through the Commissioner)
2. The Finance Officer
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi
3. The Manager
New and Revised Section
Centralized Pension Processing Centre
Chandni Chowk, Delhi – 110 006
4. The Branch Manager
State Bank of India
Shoe Market
Moti Katra, Agra – 282003
UP.

..Respondents

(Mr. U N Singh, Advocate for respondent Nos. 1 & 2 –
Nemo for respondent Nos. 3 & 4)

O R D E R (ORAL)

The applicant's wife, Mrs. Santosh Gangal, was working as Primary Teacher in Kendriya Vidyalaya Sangathan (KVS) – respondent organization. She died in a road accident on 01.12.1998. The applicant was sanctioned family pension vide Annexure A-3 Pension Sanction Order dated 06.01.2000, according to which, the family pension was fixed at ₹1463/- . After the implementation of 6th Central Pay Commission (CPC) recommendations, his family pension was revised vide Annexure A-4 order dated 11.09.2013 in terms of the O.M. dated 28.01.2013 of Department of Pension & Pensioners' Welfare. In terms of Annexure A-4 order, the applicant's family pension was revised to ₹4050/- pm + dearness relief (DR) w.e.f. 01.01.2006 to 23.09.2012, and further revised to ₹4887/- pm + DR w.e.f. 24.09.2012.

2. The applicant is aggrieved of impugned Annexure A-1 letter of Assistant Commissioner (Fin.), KVS to the Manager (Instt.), State Bank of India, Parliament Street, New Delhi, whereby a communication has been sent to the bank, *qua* the applicant that his pension has been downwardly revised to ₹3500/- pm w.e.f. 01.01.2006, as per the fitment table, in accordance with 6th CPC recommendations. A communication with regard to the impugned Annexure A-1 has been received by the applicant vide Annexure A letter dated 09.05.2017 from the Finance Officer of KVS. Apparently, the applicant had represented against the impugned Annexure A-1 letter to the respondents; in response to which, the Annexure A letter dated 09.05.2017 has been sent to him.

Aggrieved by the impugned Annexure A-1 order, the applicant has approached this Tribunal in the instant O.A. praying for the following main reliefs:

“ii. Declare the order dated 09.05.2017 (A Impugned), order dated 03.03.2016 (A-1 Impugned) and order dated 28.03.2016 (A-2 Impugned) as illegal, arbitrary, discriminatory and quash and set aside the same with consequential benefits.

iii. Pass the order directing to respondents to repay the recovered amounts from the pension of the applicant.”

3. Pursuant to the notices issued, the respondents entered appearance. Separate replies have been filed on behalf of respondent Nos. 1 & 2 and respondent No.4.

4. Arguments of learned counsel for applicant and learned counsel for respondent Nos. 1 & 2 have been heard today. There is no appearance on behalf of respondent Nos. 3 & 4.

5. Mr. K M Singh, learned counsel for applicant argued that the family pension of the applicant is revised without putting him to notice, which is illegal. In this regard, he relied on the following judgments of Hon’ble High Court and Hon’ble Apex Court:

- i) Judgment of Hon’ble Telangana & Andhra Pradesh High Court in **V. Kannaiah v. The Commandant SAR CPL, Amberpet, Hyderabad & others**, 2017 (6) SLR 603 (Telan. & A.P.); and
- ii) Judgment of Hon’ble Apex Court in **Bhagwan Shukla v. Union of India & others** (Appeal (Civil) No.5447/1994) decided on 05.08.1994.

He also relied upon the paragraph 3 (ii) of O.M. dated 06.02.2014 of Department of Personnel & Training on the issue of advance notice.

6. The learned counsel, thus, argued that the action of the respondents in reducing the family pension of the applicant without putting him to notice and ordering for recovery of alleged excess payment made is completely illegal, and hence, reliefs sought by the applicant may be allowed.

7. *Per contra*, Mr. U N Singh, learned counsel for respondent Nos. 1 & 2 submitted that the family pension of the applicant was revised vide Annexure A-4 letter dated 11.09.2013 in accordance with the O.M. dated 28.01.2013 of Department of Pension & Pensioners Welfare, wherein, *inter alia*, it is stated as under:-

“2. It has been decided that the pension of pre-2006 pensioners as revised w.e.f. 1.1.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 1.9.2008, as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008. In the case of HAG and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above-referred OM dated 30.8.2008 of Ministry of Finance, Department of Expenditure.”

8. Mr. U N Singh further submitted that in terms of the recommendations of 6th CPC, the pay scale of the Principals in KVS was revised to PB-3 ₹15600-39100 with Grade Pay of ₹6600/-. However, the Government later decided to grant the Grade Pay of ₹7600/- to the Principals. In view of it, the Principals, who had retired prior to 01.01.2006,

also started demanding for revision of their pension in terms of the new pay scale and grade pay of the Principals.

9. Apparently, the KVS revised the pension of its retired employees in accordance with the O.M. dated 28.01.2013 taking into consideration the new pay scales and grade pay of various posts. In a way, the KVS implemented the 'one rank one pension' for the retired employees without authorization from the Government.

10. The Ministry of Human Resource Development, Department of School Education & Literacy, in reply to the letter of KVS dated 26.05.2016, in respect of fixation of pension of the retired Principals, informed as under:-

"I am directed to refer to KVS's letter No.1-1/2015/KVS/JC(Fin) dated 26.05.2016 on the subject mentioned above and to clarify that in respect of the Principals of KVS who retired before 01.01.2006, their pension and family pension would have to be fixed with respect to the amounts indicated in Column 9 and 10 of the Annexure to D/o P&PW OM dated 28.01.2013 corresponding to the scale of pay applicable prior to 01.01.2006 i.e. Rs.12600/- and Rs.7560/- respectively. Same criteria would hold good in respect of other category of employees also."

11. Mr. K M Singh, learned counsel for applicant pointed out that the clarificatory O.M. in regard to the revision of pension of pre-2006 pensioners was issued on 06.04.2016 (p.66), whereas the applicant's family pension was reduced on 03.03.2016, i.e., much before the issuance of *ibid* O.M. dated 06.04.2016.

12. I have carefully heard the arguments of learned counsel for the appearing parties and have perused the pleadings.

13. Admittedly, the action of the respondents in reducing the family pension of the applicant unilaterally, without putting him to notice, cannot be legally justified. The principles of natural justice would demand that the applicant ought to have been put to notice before his family pension was reduced vide letter dated 03.03.2016. However, it cannot be the case of the applicant that if erroneously his pension has been fixed at a higher level, he should be allowed to draw the same for all times to come. The Hon'ble Apex Court has also held that the Government has a right to re-fix the pension of retired employee in accordance with the rules and his entitlement. In the instant case, I find that the applicant has been paid pension at a higher level, which the respondents have corrected by issuing the impugned Annexure A-1 order dated 03.03.2016. I do not find anything illegal in doing so. Nevertheless, it is also to be noted that the applicant had never indulged into any misrepresentation in getting his family pension sanctioned at a higher level. Hence, the respondents are not justified in seeking any recovery towards the excess payment.

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

(a) *The respondents shall not recover any excess payment made to the applicant towards family pension pursuant to Annexure A-1 letter dated 03.03.2016. Any amount already recovered from the applicant shall be refunded to the applicant within a period of two months from the date of receipt of a copy of this order.*

(b) The re-fixation of the family pension of the applicant in terms of the letter dated 03.03.2016, which has been done on the basis of the correct application of O.M. dated 28.01.2013, is found to be completely in order.

There shall be no order as to costs.

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

October 5, 2018
/sunil/