

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.720 of 2017

This the 10th day of October, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Uttam Chand Nagpal, A.A.O. (Rtd.)
s/o late Howan Das, aged 88 years
r/o H.No.3F 86, NH-3, NIT, Faridabad.

....Applicant

(By Advocate : Shri D.P. Sharma)

VERSUS

Union of India through,

1. The Secretary,
M/o Human Resource Development,
Shastri Bhawan, New Delhi.
2. The Secretary,
M/o Finance, Deptt. Of Expenditure,
North Block, New Delhi.
3. The Controller General of Accounts,
M/o Finance, Deptt. of Expenditure,
Mahalekha Niyantrak Bhawan,
GPO Complex, Block E, Aviation Colony,
INA Colony, New Delhi.
4. The Senior Accounts Officer,
Pay & Accounts Office, Deptt. of Education,
M/o Human Resource Development,
Shastri Bhawan, New Delhi.

.....Respondents

(By Advocate : Shri Gyanendra Singh)

ORDER (Oral)

By filing this OA, the applicant is seeking the following reliefs:-

- “(i) Pass an order to set aside and quash the impugned order issued by the respondent no.4.
- (ii) Direct the respondent no.4 to revise and enhance the monthly pension of the applicant to Rs.9375/- from 01st January, 2006 and issue the final E – Authority SUPERANNUATION incorporating therein the increase in respect of revised monthly Pension and Family Pension accordingly.

- (iii) Direct the respondent no. 4 to make/arrange payments on accounts of arrears of Pension etc. from the month of January, 2006 till date with interest @ 12 per annum thereon for the delay.
- (iv) Direct the respondents to pay compensation of Rs.50,000/- in addition to and over & above the interest for delay as prayed for above to compensate the mental agony and day to day financial hardships faced by the aged applicant, who has been made to wait for his dues for none of his fault.
- (v) Award costs and
- (vi) Pass any other order/direction as may be deemed just & proper in the light of facts & circumstances of the case.”

2. The brief facts of the case are that the applicant, who is now 89 years of age, superannuated from the post of Junior Accounts Officer (JAO) in the pay scale of Rs.1640-2900 w.e.f. 30.11.1986. He was sanctioned monthly pension of Rs.805/- w.e.f. 1.12.1986 on pro-rata basis vide PPO dated 12.11.1986. Subsequently, according to the applicant, on implementation of recommendations of 5th CPC, w.e.f. 1.1.1996, the post of JAO in the pay scale of Rs.1640-2900 was initially revised to the scale of pay of Rs.5500-9000 and later on the pay scale of this post raised to Rs.6500-10500 and accordingly the monthly pension of the applicant was also revised to Rs.2450/- w.e.f. 1.1.1996.

2.1 On implementation of recommendations of 6th CPC, the post of JAO in the pre-revised pay scale of Rs.6500-10500 has been placed in PB-2 (Rs.9300-34800) with Grade Pay of Rs.4200/- and the post of Assistant Accounts Officer in the pay scale of Rs.7450-11500 has also been placed in PB-2 (Rs.9300-34800) with Grade

Pay of Rs.4600/- in the revised pay structure as per the CCS (Revised Pay) Rules, 2008.

2.2 In further compliance of 6th CPC's recommendations, the above two posts i.e. JAO and AAO have been merged and upgraded in pre-revised pay scale of Rs.7500-12000 and placed in same PB-2 (Rs.9300-34800) with Grade Pay of Rs.4800/- in the revised pay structure in pursuance of CCS (Revised Pay) Rules, w.e.f. 1.1.2006.

2.3 Consequent upon merger of cadres of JAO and AAO, the same has been re-designated as AAO carrying pre-revised pay scale of Rs.7500-12000 revised in PB-2 with Grade Pay of Rs.4800/- w.e.f. 1.1.2006 by the respondent no.3, vide OMs dated 2.6.2009, 16.6.2009 and 26.6.2006. However, the pension of the applicant was incorrectly revised vide e-Authority-SUERANNUATION dated 7.10.2013 (Annexure A5) by taking into consideration pre-revised scale of pay of Rs.5500-9000 revised to PB-2 (Rs.9300-34800) with Grade Pay of Rs.4200 and further by linking the same with the qualifying service.

2.4 Feeling aggrieved by the aforesaid action of the respondents, the applicant served a legal notice dated 28.12.2015 and also sent a representation to Deputy Secretary, Ministry of Personnel Public Grievance and Pension and Under Secretary, Ministry of Human Resource Development, Department of Higher Education, New Delhi by means of e-mails dated 27.4.2016. However, earlier mistake of proportionate reduction of pension linking it with the qualifying service was rectified but the pension was again revised

wrongly taking into account the pre-revised scale of Rs.5500-9000 w.e.f. 1.1.2006 to Rs.7215/- ($5500 \times 1.86 = 10,230 + 4200 = 14,430 / 2 = 7215$) considering the equivalent stage of pay in the revised pay structure in the PB-2 corresponding to the minimum of Rs.5500/- in the initial pre-revised scale of pay of Rs.5500-9000, which was later on replaced by the pay scale of Rs.6500-10500. However, the respondents failed to take due consideration to the fact that post/grade S-14, pay scale w.e.f. 1.1.2006 Rs.7500-12000 and have failed to fix the pension of the applicant at Rs.9375 ($7500 \times 1.86 = 13,950 + 4800 = 18750 / 2 = 9375$), which is correspondence to the equivalent stage of pay in the revised structure of PB-2, corresponding to the minimum pay of Rs.7500/- plus Grade Pay of Rs.4800/- which has been assigned to the post of JAO, which post was held by the applicant at the time of his retirement.

2.5 Applicant averred that since the post of JAO in the pre-revised scale of Rs.6500-10500 has ceased to exist and has been merged and re-designated as Assistant Accounts Officer in the pre-revised scale of Rs.7450-11500 and upgraded to pre-revised pay scale of Rs.7500-12000 with revised GP Rs.4800/- w.e.f. 1.1.2006, and thus the pre-revised scale has become non-existent from 1.1.2006, so the correct stage of revision of the pension of the applicant should have been Rs.9375/- as stated above. In support of his claim, the applicant has placed on reliance of the Hon'ble Delhi High Court's Order dated 4.11.2016 in WP(C) No.8058/2015

decided on 4.11.2016, the relevant portion of the same reads as under:-

“11. One cannot accept that the same post can have two different pay scales, one for existing employees performing the same tasks and doing the same work on the ground that they were appointed or have been functioning on the said post prior to 1.1.2006, whereas a person appointed later in point of time would get the higher pay scale. Logically and as sequitor, the argument of the Union of India that where new appointments or promotions were made, the employees working on the posts would immediately get the benefit of pay under Rule 7A Clause (ii) is wrong and fallacious. The principle of upgradation of pay of the senior on the junior getting a higher pay scale is applicable in certain situations. Note 2A does not prescribe and record any such precept.”

2.6 Counsel for the applicant further stated that the respondents have not applied their mind to the core issue of merger and upgradation of the post from which the applicant has retired and re-designated as AAO in the pre-revised scale of Rs.7450-11500 up-graded to the pre-revised scale of Rs.7500-12000 with revised GP of Rs.4800/- in PB-2 in the revised pay structure w.e.f. 1.1.2006.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that during merger of JAO and AAO posts, there was no such order of giving the benefit of this merger to the employees who have already retired prior to this merger.

3.1 The respondents have stated that they have taken into consideration of revised scale of Rs.9300-34800 + 4200 and not Rs.9300-34800 + 4800 and the sum of minimum pay in the pay band w.e.f. 1.1.2006 to Rs.7215/- $(5500 \times 1.86) = 10,230 + 4200 = 14,430 / 2 = 7215$) as per OM dated 28.1.2013, which reads as under:-

“The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, orders were issued for revision of pension/family pensioners vide this Department's OM No.38/37/08-P&PW(A) dated 1.9.2008, as amended from time to time.

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.

3. The normal family pension in respect of pre-2006 pensioners/family 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 would also be further stepped up to 30% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale in which the Government servant 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 30% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above OM dated 30.8.2008 of Ministry of Finance (Department of Expenditure).

4. A revised concordance table (Annexure) of the pre-1996, pre-2006 and post 2006 pay scales/pay bands indicating the pension/family pension (at ordinary rates) payable under the above provisions is enclosed to facilitate payment of revised pension/family pension.

5. The pension so arrived at in accordance with para 2 above and indicated in Col. 9 of Annexure will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable before 1.1.2006 and in no case it will be less than Rs.3,500/- p.m.

6. The family pension at enhanced rates (under sub rule (3)(a) of Rule 54 of the CCS (Pension) Rules, 1972) of pre-2006 pensioners/family pensioners revised w.e.f. 1.1.2006 in

terms of para 4.1 or this Department's OMNo.1/3/2011-P&PW(E) dated 25.5.2012 would be further stepped up in the following manner:

(i) In the case of Government servants who died while in service before 1.1.2006 and in respect of whom enhanced family pension is applicable from the date of approval by the Government, i.e.24.9.2012, the enhanced family pension will be 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 in which the Government servant had died, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OMNo.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.

(ii) In the case of a pensioner who retired before 1.1.2006 and in respect of whom enhanced family pension is applicable from the date of approval by the Government, i.e.24.9.2012, the enhanced family pension will be stepped up to the amount of pension as revised in terms of para 2 read with para 5 above. In case the pensioner has died before from the date of approval by the Government ,i.e. 24.9.2012, the pension will be revised notionally in terms of para 2 read with para 5 above. The amount of revised enhanced family pension will, however, not be less than the amount of family pension at ordinary rates as revised in terms of para 3 above.

7. In case the pension consolidated pension/family pension/enhanced family pension calculated as per para 4.1 of OM No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

8. All other conditions as given in OM No. 38/37/08-P&PW(A) dated 1.9.2008, as amended From time to time shall remain unchanged.

9. These orders will take effect from the date of approval by the Government, i.e. 24.9.2012. There will be no change in the amount of revised pension/family pension paid during the period 1.1.2006 and 23.9.2012, and, therefore, no arrears will be payable on account of these orders for that period.

10. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

11. All the Ministries/Departments are requested to bring the contents Of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and subordinate Offices under them on a top priority basis. All pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners.”

3.2 In the rejoinder, the applicant while reiterating the averments made in the OA and denying the contents of the counter affidavit further stated that although the respondents have referred to OM dated 28.1.2013 for revision of pension of pre-2006 pensioners’ yet failed to apply the mind that post of JAO in the pay scale of Rs.7500-12500 from which the applicant retired has virtually been abolished and merged with the post of AAO and upgraded in the pay scale of Rs.7500-12000 and revised in PB-2 with Grade Pay of Rs.4800/- w.e.f. 1.1.2006 while the corresponding minimum pay with reference to above OM arrives to Rs.18,750 ($7500 \times 1.86 = 13950 + 4800 = 18750$) and as such minimum pension works out to Rs.9375 only, which is the only relief prayed by the applicant in this OA.

4. Heard learned counsel for the parties and perused the pleadings available on record.

5. The short issue involved in this case whether the benefit of merger of cadres of JAO and AAO, as Ministry of Finance vide Notification under GSR 622 (3) dated 29.8.2008 (page 21 of the paper book) had upgraded the pre-revised pay scales of JAO and

AAO and placed them in a common Pay Band (PB-2 Rs.9300-34800) with GP Rs.4800/- and the JAOs and AAOs have been placed in the said PB w.e.f. 1.1.2006 vide OM dated 2.6.2009 (page 22 of the paperbook) in a common PB-2 Rs. 9300-34800/- with GP Rs.4800/-, can be extended to the applicant, who admittedly retired from the post of JAO way back in the year 1986, while revising his pension as per the recommendations of the 6th CPC.

6. The plea of the applicant is that when the post, which was held by him at the time of his retirement, has been merged with that of AAO as per aforesaid OMs, the revision of his pension has to be done taking into account the pre-revised pay scale, i.e., Rs.750011500 which has been placed in PB-2 (Rs.9300-34800) with GP Rs.4800/- w.e.f. 1.1.2006. However, to this plea, the contention of the respondents is that during merger of JAO and AAO posts, there was no such order of giving the benefit of this merger to the employees who have already retired prior to this merger and the respondents have revised the pension of the applicant taking into account the pay scale which was held by the applicant, which was revised as per the recommendations of the 6th CPC and the respondents have correctly fixed the pension as per the provisions of the aforesaid OM dated 28.1.2013, which has already quoted above.

7. Counsel for the applicant has not brought on record any order or notification vide which it can be said that the merger of cadres of JAO and AAO as has been done by the respondents vide aforesaid OMs, *mutatis mutandis* applies in the case of pensioners.

Instead, the pension revision orders are with the directions issued from time to time by the Govt. of India as detailed in para 3.1 above. The judgments relied upon by the applicant are not applicable to the facts of this case as the same are not directly related to the issue involved in this case.

8. In view of the above position, this Court is unable to interfere in the matter of revision of pension of the applicant. Accordingly, the present OA being devoid of merit is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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