

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

OA-943/2017

Reserved on : 11.09.2018.

Pronounced on : 12.12.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Vidya Prakash Gupta, 71 years
S/o Late Sh. Onkar Dass Gupta,
R/o Flat No. 314, Great India Apts.,
Plot No. 15, Sector-6,
Dwarka, New Delhi-110075.

.... Applicant

(through Sh. D.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Personnel, PG, Pensions,
Govt. of India,
Deptt. of Pension & Pensioners' Welfare,
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.
2. Secretary,
Ministry of Communications,
Govt. of India,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi-110001.
3. Principal Controller of Communication
Accounts DOT Building, (Near Parsad Nagar
Fire Station), Parsad Nagar,
New Delhi-110005.

.... Respondents

(through Sh. Subhash Gosai, Advocate)

ORDER

Briefly stated, the applicant was appointed as Engineering Supervisor (Re-designated as Junior Engineer) in the Erstwhile P&T Deptt. (Now Deptt. of Telecom) on 16.05.1967. He was promoted as Senior Assistant Engineer (later re-designated as Senior Sub Divisional Engineer) in the pay scale of Rs.2200-4000/- on regular basis w.e.f. 01.09.1993. Subsequently, the post of Senior Sub Divisional Engineer was categorized as JTS. The applicant retired as Senior Assistant Engineer on 27.09.1994. His basic pension was calculated & fixed at Rs.1546/- under CCS (Pension) Rules, 1972.

2. The Guidelines for grant of revised pension to pre 2006 pensioners were issued by Deptt. of Pension and Pensioners' Welfare vide O.M. No. 38/37/08-P&PW (A) dated 01.09.2008. The pension has been delinked from the qualifying length of service of 33 years for the pre 2006 pensioners as notified by GOI, Ministry of P, PG and Pensions, Deptt. of Pension and Pensioners' Welfare vide O.M. No. 38/37/08-P&PW(A) dated 06.04.2016 under the CCS (Pension) Rules, 1972. Vide OM No. 38/37/08-P&PW(A) dated 06.04.2016 issued by Department of Pension & Pensioners' Welfare, revised pension has been delinked from qualifying service of 33 years.

2. The applicant made a representation dated 16.11.2016 for re-fixing/revising his pension w.e.f. 27.09.1994 at Rs. 1900/- (notional)

instead of Rs. 1546/-. The applicant was informed by the office of Pr. Controller Communication Accounts, Deptt. of Telecom, Delhi Region vide letter No. GMM-TA/PC-641/2016 dated 19.12.2016 that revised notional pension Rs.1900/- per month w.e.f. 27.09.1994 cannot be granted. The applicant states that benefit of delinking of pension from minimum qualifying service of 33 years is accorded even to those who have completed 10 years of service as per Ministry of Finance, Deptt. of Expenditure O.M. No. CPAO/IT&Tech./Revision (Pre 2006)/2016-17/8Vol-VI/58 dated 13.06.2016, hence this benefit has been wrongly denied to him.

3. Aggrieved, the applicant has filed the current O.A. seeking the following reliefs:-

- “(a) To direct the Secretary Deptt. of Telecom. to revise the Pension of Applicant as Rs.1900/- (Notional, as 50% of Last Basic Pay Drawn i.e. 50% of Rs. 3800/-) w.e.f. 27.09.1994 and Family Pension also Rs. 1140/- (Notional, being 30% of Last Basic Pay Drawn i.e. 30% of Rs.3800/-).
- (b) To Re-fix/Revise the Notional Pension & Family Pension w.e.f. 01-01-1996 (date of implementation of Vth. CPC recommendation).
- (c) To Re-fix/revise Pension & Family Pension w.e.f. 01-01-2006 (date of implementation of VIth. CPC) and to pay the Arrears w.e.f. 01-01-2006 till 31-12-2015.
- (d) To Re-fix/revise the Pension & Family Pension w.e.f. 01-01-2016 (date of Implementation of VIIth. CPC) and to pay the Arrears.”

4. In reply, the respondents without disputing the facts of the case have submitted that on permanent absorption of the applicant in

TCIL w.e.f. 27.09.1994, he is deemed to have retired from government service w.e.f. 26.09.1994. He opted for pro-rata pension for the service rendered in Government for the period from 16.05.1967 to 26.09.1994 and his pro-rata pension commenced w.e.f. 27.09.1994. At the time of his deemed retirement from Government service, he was in the pay scale of Rs.2200-4000/- with last pay of Rs.3800/- and he was allowed a monthly pension of Rs.1546/-. His pro-rata pension was revised to Rs.4659/- w.e.f. 01.01.1996 consequent to 5th CPC. It is submitted that consequent to 6th CPC, his pro-rata pension of Rs.4659/- was revised to Rs.10,531/- w.e.f. 01.01.2006. The applicant sent a representation dated 16.11.2016 requesting for retrospective revision of pension from 27.09.1994 on which a speaking order dated 19.12.2016 was passed mentioning that benefit of delinking of qualifying service of 33 years is available w.e.f. 01.01.2006, hence the reliefs sought by the applicant are devoid of merit.

5. I have gone through the facts of the case carefully and considered rival submissions of both sides. The claim of the applicant for revision of his pension appears to be on the premise that he was holding the post of Group-A officer. He has mentioned in his rejoinder that on 27.09.1994 on his absorption in TCIL he was holding the post of Senior Assistant Engineer, which has been declared as

Group-A vide DOT order dated 02.09.1994 (Annexure A-3). The aforesaid order dated 02.09.1994 reads as under:-

"Subject: Grant of pay fixation benefit under FR 22(1)(a)(1) for JTOs and SDEs on their promotion as SDEs and as JTs, officers of ITS Group 'A' respectively.

1. Kindly refer to this office letter No.5-10/89-NCC dtd. 26.06.1990 and No. 3-2/90-TE-I dtd. 25.09.1990 wherein the JTOs and SDEs (Formerly AEs) were granted Internal advancement on completion of 12 years of regular service in their respective grade in the pay scale of Rs.2000-3500 and Rs.2200-4000 respectively. The benefit of FR 22(1)(a)(1)(FR22(c)(old) was also extended at the time of their Internal promotion.
2. The service Associations have been promotion their demand for fixation of their pay under Fr 22(1)(a)(1)(22(c)old) on their promotion to SDE (formerly AEs) and JTs in the pay scale of Rs.2000-3500 and Rs.2200-4000 respectively.
3. The matter has been examined in consultations with DOP & Trd. And Ministry of Finance (Deptt. Of Exclamation) and I am directed to convey the approval of Telecom. Communication to extend the bound fit of grant of FR 22(1)(a)(1)(FR 22(c)old) pay fixation to JTOs and SDEs both in the granted of Rs.2000-3500 as well as Rs.2200-4000 their vertical promotion to Gr.'B'&'A' (JTS) respectively.
4. These orders will take effect from 1.9.1994 and apply to regular or ad-hoc promotion made for Indefinite period which are likely to be regularized without break. In every ad-hoc promotion order a certificate to the effect that the ad-hoc promotion is against a clear vacancy for indefinite period likely to be regularized without break will have to be endorsed to get this benefit. The fixation under these orders will not be admissible for local officiating promotion in short term leave vacancies etc.
5. This issues with the concurrence of the telecom. Finance Advice vide this U.O.No.2689/FA-I/94 dated 2-9-1994."

In the aforesaid communication, there is no mention that the post of Assistant Engineer is a Group-A post.

5.1 In the order dated 19.12.2016, the respondents have clearly stated that:-

"In respect of revision of pension w.e.f. 01.01.2006 all order of G.O.I. issued from time to time and till date have been taken into consideration. The pension already authorized by this office PPO letter dated 09.10.2015 is Rs.10531/- p.m. w.e.f. 01.01.2006. This is based on the pay scale at the time of your retirement. In your representation you have mentioned that your pay scale at the time of retirement is as 2200-4000 (PB-3, 15600-39100) G.P-5400 as new scale of Group 'A' entry which is wrong since this pay scale is meant only for the Direct Recruitment of Group 'A' officers. You are not a direct recruit Group 'A' officer and hence the PB-3 pay scale will not be applicable to you.

It may kindly be noted that at the time of your absorption in TCIL on 27.09.1994 as per DOT Sanchar Bhawan Ir.no.11-11/94-STG-II dt. 06.09.1995 it has been mentioned your designation as Assistant Engineer, an officer belonging to Telecom Engineering Service Group 'B'. Accordingly and as per the table to DOP &PW OM dt. 28.01.2013 the minimum pension to be authorised is Rs.8145/-. But your pension has been fixed at @Rs.10531/- which is higher. Hence the pension fixed by this office letter dt. 09.10.2015 is found to be in order.

Further, as per the DOP & PW OM dated 06.04.2016 the benefit of pension delinking of 33 years of service is available w.e.f. 01.01.2006 only."

5.2 At the time of deemed retirement of the applicant from government service, he was in the pay scale of Rs. 2200-4000/- with last pay of Rs.3800/- and was allowed monthly pension of Rs. 1546/- p.m. His pro-rata pension was revised to Rs. 4659/- w.e.f. 01.09.1996. Consequent to 6th CPC, his pro-rata pension of Rs.4659/- was revised to Rs.10,531/- w.e.f. 01.01.2006 based on pay scale of Rs.2200-4000 (pre revised) with corresponding pay scale of PB-2 Rs. 9300-34800 with Grade Pay of Rs.5400/-. Taking into consideration Department of Pension & Pensioners' Welfare O.M. dated 06.04.2016 (Annexure A-5) the total service of Sh. V.P. Gupta, which was less than 33 years of qualifying service w.e.f. 01.01.2006 was delinked from the qualifying service of 33 years for revised pension.

5.3 I feel that the contention of the applicant seems to be unfounded and his pension has been correctly fixed, as per rules.

O.A. is accordingly dismissed. No costs.

(Praveen Mahajan)
Member (A)

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