

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00059/2018

Monday, this the 5th day of November, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

K.G. Prabhakaran, S/o. Late K.K. Govindan, aged 75 years,
 Machinist (HS-I) (Retd.), Heavy Vehicle Factory, Avadi,
 Kattuparambil House, Vemballur PO, Thrissur
 Dist – 680671.

..... **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Principal Controller of Defence Accounts,
 Draupathi Ghat, Allahabad – 211014.
2. Controller of Defence Accounts, 618,
 Annasalai, Teynampet, Chennai – 600 018.
3. General Manager, Heavy Vehicle Factory,
 Avadi, Chennai – 400054.
4. Defence Pension Disbursing Officer,
 Thrissur – 680001.
5. Union of India, represented by its Secretary,
 Department of Pension & Pensioners' Welfare,
 South Block, New Delhi-110 001.

..... **Respondents**

(By Advocate : Mr. M.K. Padmanabhan Nair, ACGSC)

This application having been heard on 30.10.2018 the Tribunal on
 05.11.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “(i) To call for records leading up to the issue of Annexure A7 and quash

the same,

- (ii) To declare that the applicant is entitled for pension based on the pay band plus grade pay ie, Rs. 5200-20200 with a grade pay of Rs. 2800/- applicable to the post of Highly Skilled Grade-I w.e.f. 1.1.2006.
- (iii) To direct the respondents to issue a revised PPO showing the Grade pay as Rs.2800 in Pay Band I and the pension at Rs. 5585/- payable w.e.f. 1.1.2006.
- (iv) To direct the respondents to draw and disburse the arrears of pension and with all consequential benefits within a stipulated period.
- (v) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
- (vi) Grant cost of this OA.”

2. The brief facts of the case are that the applicant joined service as an Artisan Trainee under the 4th respondent on 1.6.1964. While working as Machinist (HS-I) the applicant took voluntary retirement w.e.f. 6.1.1991. His scale of pay at the time of retirement was Rs.1320-30-1560-40-2040/-. Initially he was granted a monthly pension of Rs. 745/-. Applicant was never issued with a revised PPO after the implementation of 5th and 6th CPC. However, on revision of pay of Artisan Staff under the Defence establishment the pay of Highly Skilled Grade I was revised to PB-1 with a Grade Pay of Rs. 2,800/-. The applicant was paid pension based on the Grade Pay of Rs. 2,400/- only. Moreover, the pension was revised on pro-rata basis contrary to the OM dated 6.4.2016 issued by the 5th respondent. The applicant submitted representation on 17.11.2017 to the 3rd respondent but he had not received any reply to the said representation or any revised PPO. Aggrieved the applicant has approached this Tribunal.

3. Notices were issued to the respondents. They have entered appearance through Shri M.K. Padmanabhan Nair, ACGSC and filed a reply statement. The stand taken by the respondents in the reply statement is that the applicant joined the 3rd respondent as Tool Maker B Semi Skilled on 1.7.1966 and retired voluntarily from service on 6.1.1991 as Machinist HS-I after completing 26 years, 5 months and 12 days service. Applicant's pension and gratuity was calculated after giving 5 years weightage to the qualifying service as per the existing rule at that time. Applicant's pay scale at the time of voluntary retirement in the post of Machinist HS-I was Rs.1320-30-1560-40-2040/- and was sanctioned basic pension of Rs. 745/-. After 5th CPC the pension of the applicant was revised vide Annexure R(d) PPO and his basis pension was fixed at Rs. 2,271/-. Later after 6th CPC his basic pension was revised to Rs. 5,134/-. Again as per the 7th CPC a new ePPO [Annexure R(o)] was issued revising his basic pension to Rs. 15,250/- w.e.f. 1.1.2016. The basic pension was fixed based on the implementation of pay commission recommendations and revised pension rules/orders issued by the Government of India time to time. The applicant's representation dated 7.3.2017 claiming fixation of pay in the pay scale of Rs. 1400-40-1800-50-2300/- w.e.f. 6.1.1991, Rs. 5000-150-8000/- w.e.f. 1.1.1996 and Rs. 9300-34800/- plus GP Rs. 4,200/- w.e.f. 1.1.2006 was considered and it was found that the persons named in the representation i.e. Shri U. Chandrasekaran and Shri K. Unnikumaran retired during 2001 and 2002 respectively and were given promotion/ACP, whereas the applicant had voluntarily retired from service on 6.1.1991 i.e. 10 years before the above two persons retired. The respondents also contend that the applicant

is already getting a pension of Rs. 5,134/- more than the pension as per DOPT OM dated 6.4.2016 i.e. 50% of the sum of minimum pay in the pay band and GP/minimum pay in the pay scale as per fitment table. The cadre of Artisan Staff in Highly Skilled-I and Highly Skilled-II were merged as Highly Skilled and the pay scale for Highly Skilled was fixed as Rs. 4000-6000/- w.e.f. 1.1.1996. The respondents have relied on the judgment of the apex court in ***K.S. Krishnaswamy etc. v. Union of India & Anr.*** - Appeal (Civil) No. 3174 of 2006 dated 23.11.2006. He has also relied on the order of this Tribunal in OA No. 180/960/2017 dated 31.5.2018 wherein a similar issue had been considered by this Tribunal dismissing the OA.

4. Heard Shri C.S.G. Nair, learned counsel appearing for the applicant and Shri M.K. Padmanabhan Nair, ACGSC learned counsel appearing for the respondents. Perused the records.

5. The applicant relied on the following judgments of various High Courts as well as orders of this Tribunal in support of his contentions:

- a) ***Ram Phal v. Union of India & Ors.*** – WP(C) No. 3035/2016 dated 03.08.2016 of Hon'ble High Court of Delhi
- b) ***M.M.P. Sinha v. Union of India & Ors.*** - Civil Writ Jurisdiction Case No. 10757 of 2010 dated 18.5.2015 of Hon'ble High Court of Patna
- c) ***Pay & Accounts Officer & Ors. v. N.R. Purushothaman Pillai*** – OP (CAT) No. 169 of 2015 dated 18.1.2016 of Hon'ble High Court of Kerala
- d) ***Thomas Pothen v. Director of Accounts & Ors.*** - OA 180/1071/2017 dated 23.10.2018 of Ernakulam Bench of the Tribunal

e) ***M.I. Thomas v. Pay & Accounts Officer & Ors.*** - OA 180/315/2017 dated 25.09.2018 of Ernakulam Bench of the Tribunal.

He submitted that applicant is similarly situated as the applicants in OA No. 180/1071/2017 and OA No. 180/315/2017.

6. The Hon'ble Supreme Court in ***K.S. Krishnaswamy's*** case (supra) held as under:

“It is common knowledge that an increase in the pay scale in any recommendation of a pay commission is a corresponding increase in the pay scale. In our view, therefore, Executive Instructions dated 11.5.2001 have been validly made keeping in view the recommendations of the Pay Commission accepted by the Policy Resolution of the Government on 30.9.1997, clarified by Executive Instructions dated 17.12.1998. The Executive Instructions dated 11.5.2001 neither over-ride the Policy Resolution dated 30.9.1997 nor Executive Instructions dated 17.12.1998 clarifying the Policy Resolution dated 30.9.1997. The Executive Instructions dated 11.5.2001 were in the form of further clarifying the Executive Instructions dated 17.12.1998 and do not over-ride the same.

Counsel for the appellants heavily relied on the Constitution Bench decision of this Court in ***D.S. Nakara v. Union of India*** (1983) 1 SCC 305 where this Court at Page 345 SCC observed that "liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement."

Nakara's case (supra) has been distinguished by this Court in ***State of Punjab & Ors. v. Boota Singh & Anr.*** (2000) 3 SCC 733; ***State of Punjab & Anr. v. J.L. Gupta & Ors.*** (2000) 3 SCC 736; ***State of West Bengal and Anr. v. W.B. Govt. Pensioners' Association & Ors.*** (2002) 2 SCC 179; and ***State of Punjab & Ors. v. Amar Nath Goyal & Ors.*** (2005) 6 SCC 754.

Nakara's case (supra) was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut off line and granting the revised pensionary benefits to employees retiring on or after the cut- off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of **Article 14** of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The facts of Nakara's case (supra) are not available in the facts of the present case. In other words, the facts in Nakara's case are clearly distinguishable.

In ***Indian Ex-Services League v. Union of India*** (1991) 2 SCC 104, this Court distinguished the decision in Nakara's case (supra) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a

demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. In [K.L. Rathee v. Union of India](#) (1997) 6 SCC 7, this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. In our view, therefore, the ratio in Nakara's case (supra) is not applicable in the facts of the present case. Lastly, it is contended that against the decision of the Delhi High Court, an SLP was dismissed by this Court on 8.7.2004 and, therefore, the doctrine of merger applies. It is not disputed that the SLP was dismissed in limine without a speaking order. This question has been set at rest by a three-Judge Bench of this Court in [Kunhayammed & Ors. v. State of Kerala & Anr.](#) (2000) 6 SCC 359, where this Court after referring to a two-Judge Bench, of this Court in [V.M. Salgaokar & Bros. \(P\) Ltd. v. CIT](#) (2000) 5 SCC 373 held at page 375 (para 22) SCC as under:

"22. We may refer to a recent decision, by a two- Judge Bench, of this Court in [V.M. Salgaokar & Bros. \(P\) Ltd. v. CIT](#) (2000) 5 SCC 373 holding that when a special leave petition is dismissed, this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court means is that it does not consider it to be a fit case for exercising its jurisdiction under [Article 136](#) of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case the Supreme Court upholds the decision of the High Court or of the Tribunal. This doctrine of merger does not apply in the case of dismissal of a special leave petition under [Article 136](#). When appeal is dismissed, order of the High Court is merged with that of the Supreme Court. We find ourselves in entire agreement with the law so stated. We are clear in our mind that an order dismissing a special leave petition, more so when it is by a non-speaking order, does not result in merger of the order impugned into the order of the Supreme Court."

Therefore, when the special leave petition is dismissed by the Supreme Court under [Article 136](#) of the Constitution, the doctrine of merger is not attracted.

For the reasons aforestated, the view taken by the Madras High Court that the clarificatory Executive Instructions in O.M. dated 11.5.2001 are an integral part of the O.M. dated 17.12.1998 clarifying the Policy Resolution of the Government dated 30.9.1997 and do not over-ride the original O.M. dated 17.12.1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that O.M. dated 11.5.2001 over-rides the original O.M. dated 17.12.1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside. The net result is that the Civil Appeal Nos. 3174 and 3173 of 2006, preferred by the pensioners, are dismissed and the Civil Appeal Nos. 3188, 3189 and 3190 of 2006, preferred by the employer Union of India, are allowed. The Judgment and order of the Madras High Court dated 29.4.2005 is affirmed. The Judgment and Orders of the Delhi High Court dated 17.8.2005, 5.9.2005, 10.11.2005 and 3.8.2005 are set aside.

Parties are asked to bear their own costs."

7. It has to be noted at the outset that the pay revision and revision of pension based on the 6th CPC have been brought into effect by the decisions of Government of India. Annexure R(q) is the office memorandum dated 01.09.2008 conveying the Government's decision on the recommendations of the 6th CPC revising the pension of number of pensioners/family pensioners. The relevant provision in Annexure R(q) reads as follows:

“4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.”

(emphasis supplied)

8. The most important portion of the aforequoted OM which tends to escape from the sight of a casual reader is that the revised pension shall in no case be lower than 50% of the minimum of the pay in the pay band plus **grade pay corresponding to the pre-revised pay scale from which the pensioner had retired**. One can not lose sight of the importance of the wordings of paragraph 4.2 because revision of pay and revision of pension is within the policy domain of the Government. When the Government of India's decision on the 6th CPC recommendations has been made clear in Annexure R1, every revision relating to pre-2006 pensioner has to go by paragraph 4.2 (*supra*) of the said OM. In this context we feel it appropriate to quote relevant portion of the order passed by the co-ordinate Bench of this Tribunal at Chandigarh on 01.09.2016 in OA No. 060/00912/2015 which reads as follows:

“8. According to OMs dated 27.10.1997 and 17.12.1998 for revision of pension w.e.f. 01.01.1996, pension has to be revised according to fitment formula given therein and then the revised pension, if less than the minimum for the corresponding revised pay scale, was to be stepped up to the said minimum amount. Similarly, w.e.f. 01.01.2006 according to OM dated 01.09.2008 revised pension has to be fixed as per fitment formula given in para 4.1 thereof, and then as per para 4.2 thereof, the revised pension was in no case to be lower than 50% of minimum of the pay in the Pay Band + Grade Pay corresponding to the pre-revised scale from which the pensioner had retired. It is, thus, manifest from the bare perusal of these OMs that only pension had to be revised. There is no provision in the OMs for notional fixation of revised pay of the pensioners in the corresponding revised pay scales and then revising their pension. On the contrary, formula for fixing revised pension directly has been given in the OMs. According to the said formula, existing pension along with dearness pension etc. has to be taken into consideration and then some fitment weightage has to be given to arrive at the revised pension. For this purpose, even reference to corresponding revised pay scale is not there in the OMs. Reference to corresponding revised pay scale comes in the context of minimum pension. The revised pension should not be lower than 50% of minimum revised pay scale/Pay Band + Grade Pay corresponding to pre-revised pay-scale. In this context only, the revised pay-scale/Pay Band + Grade Pay comes into picture. There is no reference at all to notional fixation of pay in the corresponding revised pay-scale/Pay Band + Grade Pay for revising the pension of pensioners who had retired prior to 01.01.1996/01.01.2006. Thus, the very basis of claim of the applicants that their pay has to be notionally fixed in the revised pay-scale (for revising their pension) does not exist in any of the relevant OMs. It is, thus, manifest that revised pension of the applicants has been rightly fixed by the respondents w.e.f. 01.01.1996 and 01.01.2006, as detailed in chart (Annexure R-6)”

9. This Tribunal is of the view that the aforesaid decision is squarely applicable in the instant case also. In the light of the above discussion, we hold that the OA has no merits and is only to be dismissed. We do so. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00059/2018

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the PPO No. C/FYS/10383/91.
- Annexure A2** - True copy of the letter to the 3rd respondent on 30.8.2016.
- Annexure A3** - True copy of the memo No. PS/3417/SBT/KDR dated 7.9.2016 issued by the 3rd respondent.
- Annexure A4** - True extract of the Letter No. II (5)/2009-D (Civ.I) dt. 14.6.2010 issued by the Ministry of Defence.
- Annexure A5** - True copy of the letter No. 01/CR/A/I/658 dt., 13.12.2010 issued by the Director General of Ordnance Factory.
- Annexure A6** - True copy of the fitment table annexed to CCS (RP) Rules, 2008.
- Annexure A7** - True copy of the letter No. 0926/PENCELL/01/91KGP dt. 26.4.2017 issued by the 3rd respondent.
- Annexure A8** - True copy of the representation on 17.11.2017 to the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R(a)** - True copy of MoD letter NO. 1(2)/80/D/(ECC/EC).
- Annexure R(b)** - True copy of Ordnance Factory Board instruction No. 1/A/ECC.
- Annexure R(c)** - True copy of PPO No. C/FYS/10383/91 dated
- Annexure R(d)** - True copy of 5th CPC Corr. PPO No. FYS/11771/99 dated 10.6.1999.
- Annexure R(e)** - True copy of Ministry of Defence, New Delhi order No. 11(1)/2002/D(Civ.1).
- Annexure R(f)** - True copy of DOPT OM F. No. 38/37/08-P&PW(A) dated 1.9.2008 Annexure AI
- Annexure R(g)** - True copy of 5th CPC ready reckoner Table as on 1.1.1996.

- Annexure R(h)** - True copy of revised pay band plus grade pay as per 6th CPC from pre-revised 5th CPC pre-revised scale of Rs. 4000-100-6000
- Annexure R(i)** - True copy of Ministry of Defence, New Delhi letter No. 11(5)/2009-D(Civ.I)
- Annexure R(j)** - True copy of OFB, Kolkata vide order NO. 01/CR/A/I/658.
- Annexure R(k)** - True copy of DOPT OM No. 38/37/08-P&PW(A) dated 28.1.2013.
- Annexure R(l)** - True copy of DOPT OM NO. 38/27/08-P&PW(A).
- Annexure R(m)** - True copy of 3rd respondent letter No. 0926/PENCELL/01/91/KGP
- Annexure R(n)** - True copy of incomplete application form of applicant for issue of Corr. PPO under VI CPC.
- Annexure R(o)** - True copy of 7th CPC New ePPO No. 401199100143 dated 28.12.2017
- Annexure R(p)** - DOPT Resolution No. 305
- Annexure R(q)** - DOPT OM F. No. 38/37/08-P&PW(A).
- Annexure R(r)** - Department of Pension & Pensioner's Welfare OM F. No.38/37/08-P&PW(A).
- Annexure R(s)** – Hon'ble CAT (PB) order
- Annexure R(t)** - Hon'ble High Court order in WP(C) No. 2350/2012.
- Annexure R(u)** - Hon'ble Supreme Court order.
- Annexure R(v)** - PCDA (P), Allahabad Circular No. C-189.
- Annexure R(w)** - HVF letter No. 0929/PENCELL/01/91/KGP forwarding of 6th CPC Corr. PPO No. CPC/043512/2012.