

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00284/2017

Thursday, this the 31st day of May, 2018.

CORAM:

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

P. Sundara Raja Pillai
S/o. Pakyam Pillai, aged 74 years,
Postal Assistant (Retd.), Kalabhavan,
St. Martin Church Road, Palarivattom,
Cochin – 682 025. - Applicant

[By Advocate Mr. C.S.G. Nair]

Versus

1. The Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram – 695 001
2. Senior Superintendent of Post Offices,
Ernakulam Postal Division, Cochin – 682 011.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033
4. Union of India, represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi – 110 001.
- Respondents

[By Advocate : Mr. Brijesh A.S., ACGSC]

The application having been heard on 24.05..2018, the Tribunal on 31.05.2018 delivered the following:

O R D E R

Per: E.K. Bharat Bhushan, Administrative Member

O.A No. 180/00284 of 2017 is filed by Shri P. Sundara Raja Pillai, a retired Postal Assistant for a declaration that he is entitled for 50% of the minimum of the pay

in the pay band plus grade pay as pension and to direct the respondents to issue revised PPO to the applicant accordingly.

2. Brief facts of the case are that the applicant joined the Postal Department as a Postal Assistant on 22.1.1963. He was compulsorily retired from service on 29.1.1982 with more than 15 years qualifying service. He was granted pension without any reduction in pension. On the recommendations of the Sixth Central Pay Commission, pension/family pension of pre-2006 pensioners were revised w.e.f. 1.1.2006 as per Resolution No.38/37/08-P&PW(A) dated 29.8.2008. Based on this 4th respondent issued OM No. 38/37/08-P&PW(A) dated 1.9.2008, para 4.2 of which the following is a part:

“4.2. The fixation of pension will be subject to the provisions 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 revised pay scale.”

3. On revision of pay scale as per Revised Pay Rules 2008, the pay scale of Postal Assistant was revised to Rs. 5200-20200 with Grade pay of Rs. 2400/- . The minimum pay in the said pay band and grade pay is Rs. 9840/- . Hence applicant submits that he is eligible to get 50% of the said pay of Rs. 9840/- ie., Rs. 4920 w.e.f. 1.1.2006. However the applicant's pension was only revised to Rs. 3500/- w.e.f. 1.1.2006 as per revised PPO (Annexure A2). Applicant submits that para 4.2 of the aforesaid OM does not stipulate that one should have served for a minimum period in the post from which he had retired. Applicant further submits that in an identical case viz., OA No.715/2012, this Tribunal held that irrespective of the qualifying service of the employee, he is entitled for 50% of the minimum of the pay in the revised pay band plus

grade pay as his pension. He has further stated that in OP(CAT) 169/2015 the Hon'ble High Court held:

“the resultant position that emerges from the pronouncement of the Central Administrative Tribunal as well as the different High Courts and Apex Court is that computation of pension in the matter of implementation of the 6th Pay Commission Report has to be at 50% of the Pay scale with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay of the one at which the incumbent has retired.”.

3. 4th respondent issued OM dated 6.4.2016 dispensing with the qualifying service of 33 years for full pension (Annexure A5). Based on this the Central Pension Accounting Office, (CPAO), New Delhi issued OM dated 13.6.2016 (Annexure A6) directing all the pension sanctioning authorities to revise the pension. Narrating all these, the applicant submitted representation (Annexure A7) dated 14.10.2016. But still his pension was not revised.

4. The grounds urged by the applicant are that as per Annexures A5 and A6 applicant is entitled for minimum pension applicable to the post of Postal Assistant ie., Rs. 4920/- pm w.e.f. 1.1.2006. While the applicant was compulsorily retired, no reduction in pension was ordered. Therefore, the denial of minimum pension to the applicant is illegal and arbitrary.

5. Per contra, respondents have filed a reply statement refuting the allegations in the OA. They submit that the applicant was compulsorily retired from service under Rule 40 of CCS (Pension) Rules, 1972 when he was working in the scale of Rs. 260-480. Corresponding scale in 1986 was Rs. 975-1660, in 1996 it was Rs. 3200-4900 and in 2016 it was Rs. 5200-20200 + 2000 Grade Pay. Applicant's pension was revised as per Para 4.1 of DOP&PW O.M dated 1.9.2008 and his pension was fixed at Rs. 3500/-

per month from 1.1.2006. Since applicant was compulsorily retired, Para 4.2 of OM dated 1.9.2008 mentioned above was treated as not applicable to the applicant. He is eligible for revision of pension as per DOP&PW OM dated 6.4.2016. This position has been clarified by the CPAO vide letter No.CPAO/IT&Tech/Revision(pre-2006)/2016-178 Voll.VI/58 dated 13.6.2016. When the applicant was compulsorily retired following a Rule 14 inquiry on 29.1.1982 he was sanctioned an amount of Rs. 121+ relief as pension according to the pro-rata reduction of pension without insisting on qualifying service of 33 years which prevailed at that time. This was revised to Rs. 3500/- by delinking the years of service from the qualifying years of service of 33 years as per para 4.1 of OM dated 1.9.2008. The orders of the Tribunal cited are not applicable to the applicant as those cases relate to pensioners who retired on superannuation. Respondents denied the averment that applicant has made any representation. The SLP filed against the Order in OP(CAT) No. 108/2016 is pending consideration before the Hon'ble Supreme Court. They have produced a copy of the Order in OA No. 912/2015 of the Chandigarh Bench which was dismissed by that Tribunal holding that:

“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. Judgments cited by learned counsel for the applicants do not help the applicants in any manner because the same relate to discrimination between pre-2006 and post-2006 retirees. Those who retired prior to 01.01.2006 could get full pension on completion of 33 years qualifying service only and if the qualifying service was less, pro-rata cut was applied in their pension whereas for post-2006 pensioners, the qualifying service was reduced to 20 years for entitlement to full pension. In this context, the judgments held that there could not be discrimination on the basis of date of retirement. Now even the Govt. of India has accepted it and has issued OM dated 06.04.2016 extending the benefit of full pension w.e.f. 01.01.006 even to pre-2006 pensioners who had rendered less than 33 years of qualifying service. However, the said issue is not involved in this O.A. According to these judgments also, minimum of pay in the Pay Band + Grade Pay corresponding to pre-revised pay scale has to be seen to ensure that revised pension is not less than 50% thereof. This conclusion is also manifest from the plain language of para 4.2 of OM dated 01.09.2008. At the risk of repetition, it has to be highlighted that there is no provision in any of the relevant OMs for notional fixation of pay in the revised pay scale for those who had retired prior to 01.01.1996/01.01.2006. Separate OMs for fixation of pay in revised pay scales have been issued for only those employees who were in service as on 01.01.1996/01.01.2006 and not for those who had retired prior to the said date.

10. As necessary result of the discussion aforesaid, we find no substance in the instant O.A. which is accordingly dismissed with no order as to costs.

6. Applicant has filed a rejoinder enclosing Annexure A8 which is a fitment table annexed to the CCS (RP) Rules, 2008 to show that minimum pay in the pay band Rs. 5200-20200 with Grade pay Rs. 2400/- is Rs. 9840/-. He has also produced a copy of the judgment in OP (CAT) Nos. 2/2016 and 108/2016 in which the orders of this Tribunal in OA 207/12 and OA 640/2014 were upheld by the Hon'ble High Court.

7. In the additional reply statement the respondents stated that against the judgment of the Hon'ble High Court in OP(CAT) No. 108/2016, SLP (Civil) No. 6726 of 2017 is pending before the Hon'ble Supreme Court.

8. Shri C.S.G.Nair, learned counsel appearing for the applicant and Mr. Brijesh AS, learned ACGSC appearing for the respondents have been heard and all records/pleadings perused.

9. The two issues that emerge in this OA are the plea on behalf of the applicant regarding his entitlement for revision as a pensioner despite the fact that he has been compulsorily retired and secondly whether minimum period is to be insisted upon for getting full pension. The judgment referred to by the applicant are clearly applicable to the contentions raised by him. The fact that SLPs are pending against the favourable decisions that he has cited would not stand in the way of applying the principles contained in the said judgments. More to the point in OP (CAT) No. 2/2016 the Hon'ble High Court of Kerala held as under:-

“.....The Central Civil Services (Pension) Rules, 1972 contemplates grant of various types of pensions and one such is compulsory retirement pension. The petitioners have no case that the service conditions of the respondent are not governed by the above rules. All that the Government of India meant when it is stated in paragraph 2.1 of Annexure A2 Office Memorandum that it applies to all pensioners/family pensioners under the CCS (Pension) Rules, 1972 and CCS (Extra Ordinary Pension) Rules, is that the pensioner must be a person governed by the provisions contained in the CCS (Pension) Rules, 1972. The Government of India did not make a distinction between persons drawing different types of pensions under the CCS (Pension) Rules, 1972. We, therefore, find no merit in the said contention as well.

We accordingly hold that there is no merit in the instant original petition. It fails and is dismissed.”

10. In view of the findings of the Hon'ble High Court, the applicant is eligible to get the reliefs prayed for in this OA. Hence, the O.A is allowed. The respondents

are directed to issue revised PPO to the applicant granting 50% of the minimum of the pay band plus grade pay ie., Rs. 4920/- w.e.f. 1.1.2006 and the resultant arrears of pension paid to the applicant. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. It is made clear that this order will be subject to the outcome of the SLP pending before the Hon'ble Supreme Court. The applicant shall execute a bond that he and his legal representatives shall refund the monetary benefits received under this order in the event of the SLP being adjudicated against the applicant. No order as to costs.

(E.K. Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

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Applicant's Annexures

- Annexure A1 True attested copies of Form 7 issued by the 2nd respondent.
- Annexure A2 True copy of the PPO No. 14284/Pen-2/C.No./PPO. No.3259/LPR.
- Annexure A3 True copy of the order dt. 16.08.2013 in OA No. 715/2012.
- Annexure A4 True copy of the judgment dt. 18.01.2016 in OP(CAT)169/2015.
- Annexure A5 True copy of the OM No. 38/37/08-P&PW(A) dt. 06.04.2016 issued by the 4th respondent.
- Annexure A6 True copy of the OM No, CPAO/IT&Tech/Revision (Pre-2006)/2016-17/8 Vol-VI/58 dt: 13.06.2016.
- Annexure A7 True copy of the representation dated. 14.10.2016.
- Annexure A8 True copy of the fitment table annexed to CCS(RP) Rules 2008.

Annexure A9 True copy of the Judgment in OP (CAT) No. 108/2016 dt. 26.05.2016.

Annexures of Respondents

Annexure R1 - A true copy of DOP & PW OM No. 38/37/08-P&PW(A) dated 22.07.2011.

Annexure R2 - A true copy of order dated 01.09.2016 in OA No. 912/2015 of Hon. CAT Chandigarh Bench.

PPS to Member