

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00315/2017

Tuesday , this the 25th day of September, 2018.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

M.I.Thomas, S/o Late M.O. Itteera,
Aged 82 years,
Accountant (Retd), All India Radio,
Mazhuvancherry House, Cheroor P.O.
Thrissur – 68008. - Applicant

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

Versus

1. Pay & Accounts Officer,
All India Radio, Kamaraj Salai,
Mylapore, chennai – 600004.
2. Chief Controller,
Central Pension Accounting Office,
Trikoot II Complex, Bhikajicama Place,
R.K.Puram, New Delhi 110 066.
3. Director General,
All India Radio,
New Delhi 11.
4. Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
Loknaya Bhavan, Khan Market,
New Delhi 110 001. - Respondents

[By Advocate : Mrs. Mini R.Menon, ACGS]

The application having been heard on 21.09.2018, the Tribunal
on .09.2018 delivered the following:

O R D E R

The applicant is seeking the following reliefs:

- i) To call for the records leading up to the issue of Annexure A7 and quash the same.
- ii) To declare that the applicant is entitled for revision of pension based on the pay band plus grade pay applicable to the post of Accountant w.e.f. 1.1.2006.
- iii) To direct the respondents to issue revised PPO to the applicant specifying the pension on the basis of 50% of the minimum of the pay in the pay band plus grade pay of Rs. 14430/- i.e. Rs. 7215/- w.e.f 1.1.2006 and also the corresponding family pension and grant all consequential benefits including arrears of pension within a stipulate period.
- iv) To 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.
- v) To grant cost of this O.A.

2. The facts in brief are that applicant retired as Accountant on 31.7.1992 on superannuation. He joined service in the All India Radio as LDC on 14.4.1955. he was promoted as UDC and later as Accountant. He retired on superannuation on 31.7.1992. He had a total service of 33 years. He was granted a monthly pension of Rs. 975/-. On implementation of 6th Central Pay Commission, the pay scale of Accountant was upgraded to Rs.5500-9000 and revised to PB2 with a grade pay of Rs. 4200/-. As per the fitment table annexed to CCS (RP) Rules, 2008 the minimum pay in the Pay Band of rs. 9300-34800 plus Rs. 4200 GP is Rs. 14430/-. Thus 50% of that amount of rs. 14430/- is to be paid as pension i.e. Rs.7215/- w.e.f. 1.1.2006. The applicant is getting only an amount of Rs. 6750/- as pension. The settled position is that the revised pension of the applicant should be calculated taking into account the upgraded pre-revised pay scale of Rs. 5500-9000, which was revised to Rs.9300-34800 plus Rs. 4200 GP as per 6th CPC recommendations. The representations submitted by the applicant has been rejected by Annexure A7 which is against the settled law. Aggrieved by this, the applicant approached this Tribunal for redressal of his grievance.

3. Notices were issued. Respondents put up their appearance through the Standing counsel and filed a detailed reply statement contesting the claim of the applicant.

4. It is submitted on behalf of the respondents that the pay scale of Accountant/Head Clerk of All India Radio & Doordarshan was upgraded to 5500-9000 consequent on a court judgement from the existing pre-revised pay scale of rs. 5000-8000 for those who were actually in service w.e.f 01/01/1996 as per 5th CPC. It is also submitted that the upgraded pay scale to Rs. 5500-9000 from 5000-8000 was applicable to those employees of AIR/Doordarshan who were actually in service as Accountant on 01/01/1996. On plain reading, it is evident that they alone were eligible for upgraded pay scale of Rs.5500-9000. Since, the applicant had retired from service on 31/07/1992, the question of granting higher pay scale does not arise. Hence, in the instant case the contention of the applicant that on implementation of 5th CPC his pay scale was to be revised/placed in the pay scale of 5500-9000 is totally incorrect and therefore denied.

6. The respondents submitted that the fixation of pension @ Rs.6750/- authorised to the applicant as per the fitment table annexed to the OM dated 28.01.2013 issued by Dept. Of P&PW authorised by PAO is in order. Accordingly, the applicant's pay was fixed in the pay band of 9300-34800 with a grade pay of Rs. 4200 w.e.f 01.01.2006. As per the fitment Table the minimum pay with said pay band plus grade pay is Rs. 13500 (9300 + 4200). Then 50% of the minimum of the pension Rs. 6750 (13500/2) Annexure R.3 is a copy of the fitment table. It is contended by the respondents that the fixation of pension of the applicant @ Rs.6750/- as per 6th CPC w.e.f 01/01/2006 with reference to his pre-revised pay scale of rs. 5000-8000 is in

order, since the applicant had retired from service prior to 01/01/1996. The applicant is in receipt of the entitled pension of Rs. 6750/- as of now. Annexure R.4 is the copy of PPO authority issued by the PAO. Therefore, the respondents prayed that the present original application is devoid of merits and is liable to be dismissed.

7. I have heard the learned counsel for the Applicant Mr. C.S.G.Nair and Mrs.Mini R.Menon, learned ACGSC for the respondents, perused the pleadings and carefully considered the rival submissions. I have also considered the judgments cited by the learned counsel for the applicant.

8. The facts are not in dispute. The grounds argued by the learned counsel for the applicant is that the applicant retired as Accountant on 31.7.1992. the pay scale of Accountant was upgraded to pre-revised pay scale of Rs.5500-9000 and revised to Rs.9300-34800 with a grade pay of Res. 4200/- w.e.f. 1.1.2006. The minimum pay in the said pay band plus grade pay is Rs. 14430/- and as such the pension is to be fixed at Rs. 7215/ w.e.f. 1.1.2006 being 50% of the minimum pay.

9. Learned counsel for the applicant submitted that applicant is similarly situated to the applicant in OA 715/2012 and the principle laid down in Annexure A4 order is squarely applicable to the applicant also.

10. During the course of arguments the learned counsel for the applicant brought the notice of this Tribunal that in an identical case this Tribunal had allowed the claim of the applicant in O.A. 180/749/2017 vide order dated 25th July 2018 which is reproduced as under for analysis:-

“Applicant is a pensioner. He joined service in the Department of Telecom on 24.6.1960 and he retired as Junior Telecom Officer on 31.12.1995 on superannuation. He had total service of 35 years 6 months and 7 days . At the time of retirement the applicant was drawing pay of Rs.2450/- in the scale of 2000-3500.

2. On implementation of 6th Central Pay Commission recommendations the pension of the applicant was fixed at Rs. 8475/- in PB 2 with a grade pay of Rs. 4200/- instead of Rs. 4600/-. Although originally the replacement scale of Rs. 6500-10500 was Rs. 9300-34800 with a grade pay of Rs. 4200/-, it was subsequently revised to the grade pay of Rs. 4600/- w.e.f. 1.1.2006 as per OM No. dt: 13.11.2009. Representation submitted by the applicant has not been replied so far. Aggrieved by the inaction of the respondents the applicant has filed the O.A. seeking the following reliefs.

“ To declare the applicant is entitled for revision of pension based on the pay band plus grade pay applicable to Junior Telecom Officer w.e.f 1.1.2006 i.e., Rs. 9300-34800 plus a grade pay of Rs. 4600/-.

II) To direct the respondents to issue revised PPO to the applicant specifying the pension based on the grade pay of Rs. 4600/- which amounts to Rs. 8675/- w.e.f. 1.1.2006 and also the corresponding family pension and grant all consequential benefits including arrears of pension within a stipulated period.

III) To 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.

IV) To grant cost of this O.A.”

3. It is argued on behalf of the applicant that in an identical issue in O.A. No. 715/2012, this Tribunal has held as follows vide Annexure A5 order.

“the settled law is that in no case the pension of pre 2006 pensioners shall be lower than 50% of the minimum of the pay in the pay band plus pay thereon corresponding to the pre revised pay scale from which the pensioner had retired. It means that pension of a pre 2006 retiree has to be first calculated taking into account, the revised pay in the pay band plus grade pay corresponding to the pay scale from which he retired proportionate to the length of his service and then find what is 50% of the minimum of the pay band plus grade and fix higher of the two as his pension”.

Thus 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. It is submitted that Annexure A.5 order was challenged before the Hon'ble High Court of Kerala and the OP(CAT) No.8/2014 came to be dismissed by the High Court. A Review Petitions was filed before the Hon'ble Supreme Court and that was also dismissed vide Annexure A.6. It is submitted that in Annexure A.6 order the Hon'ble Supreme Court observed as under:

“Even on merits, we have perused the Review Petition and the connected papers with meticulous care, we do not find any justifiable reason to entertain this review petition.”

4.

5. Learned counsel for the applicant has relied on the Annexure A5 order of this Tribunal in OA 715/2012 with OA 1051/2012 dated 16.8.2013. He has also relied on the Full Bench decision of CAT. Principal Bench in OA.655/2015.

6. The respondents filed the written statement and resisted the claim of the Applicant. It is submitted by them that the O.A. has been filed for seeking a declaration that the applicant is entitled for revision of pension based on the pay band plus grade pay applicable to Junior Telecom Officer w.e.f 1.1.2006, i.e Rs. 9300-34800 plus a grade pay of Rs. 4600/- and to direct the respondents to issue revised PPO to the applicant specifying the pension based on the grade pay of Rs.4600/- which amounts to Rs. 8675/- w.e.f 1-1-2006 and also corresponding family pension and grant all consequential benefits including arrears of pension within a stipulated period.

7. The respondents further submitted that on implementation of VI Pay Commission recommendations, pension of the applicant was fixed at Rs.8475/- The OM No. 1/1/2008-IC dated 13.11.2009 cited by the applicant is regarding upgradation and fixation of pay of existing employees on the implementation of 6th CPC as on 01.01.2006 and not for pensioners. Order of 6th CPC for pensioners is the order issued as per OM No. F.No. 38/37/08-P & PW(A) dated 1-9-2008. It is submitted that para 4.2. of the said order specifically states that fixation of pension will be subject to the provisions that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This was further made clear as per para 5 of clarification order No. 38/37/08-P & PW(A) dated 11-2-2009. As such subsequent revision is not applicable to the pensioner as claimed by the applicant. It is submitted that the resolution clearly states that fixation of pension will be subject to the provisions that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This has been paid to the applicant. The applicant is demanding pension against the upgraded scale for which he is not eligible for the same.

8. In their averments, the respondents submitted that Para 4.2. of OM dated 1.9.2008 is very clear that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band and the grade pay

corresponding to the pre-revised pay scale from which the pensioner had retired. The fixation of pension has been done in accordance with the existing orders of 6th CPC. According to the respondents, the applicant is not entitled for any of the reliefs sought for in the OA. and hence liable to be dismissed.

9. We have heard the learned counsel appearing on both sides and perused the pleadings at length as well as the judgements cited by the learned counsel for the parties.

10. The question raised before this Tribunal is whether the pensioners are entitled to get revision of pension as per the recommendation of 6th CPC. The decision of the Principal Bench of the Tribunal in OA. 655/2010 and *All India S-30 Pensioners Association v. UOI & Ors.* Judgement dated November 20, 2014 wherein it has been held that -

“there can be no disparity in the payment to the officers of the same rank who had retired prior to introduction of the revised pay scale with those retired thereafter.”

In office Memorandum dated April 06, 2016 issued by the Department of Pension and Pensioners' Welfare pertaining to delinking of revised pension from qualifying service of 33 years in respect of pre-2006 pensioners and the relevant extract of the same reads as under: -

“3. Orders were issued vide this Department's OM of even number dated 28.1.2013 for stepping up of pension of pre-2006 pensioners w.e.f 24.9.2012 to 50% of the minimum of pay in the pay band and grade pay corresponding to pre-revised pay scale from which the pensioner retired. Para 5 of this OM provides that in case the consolidated pension/family pension calculated as per para 4.1 of O.M. No. 38/37/08- P & PW (A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated in the O.M. dated 28.1.2013, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

4. Subsequently, in compliance of the order dated 1.11.2011 of the Hon'ble CAT, Principal Bench in OA No.655/2010, order dated 29.4.2013 of Hon'ble High Court of Delhi in WP(C) No. 1534/2012 and order dated 17.3.2015 of Hon'ble Supreme Court in SLP(C) No. 36148/2013, order were issued vide this Department's OM of even number dated 30.7.2015 that the pension/family pension of all pre-2006 pensioners/family pensioners may be revised in accordance with this Department's OM No. 38/37/08-P&PW(A) dated 28.1.2013 with effect from 1.1.2006 instead of 24.9.2012.

5. In accordance with the order issued in implementation of the recommendation of the 6th CPC, the pension of Government servants retired/retiring on or after 1.1.2006 has been de-linked from qualifying service of 33 years. In O.A. No. 715/2012 filed by Shri M.O. Inasu, a pre-2006 pensioner, Hon'ble CAT, Ernakulam Bench, vide its order dated 16.8.2013 directed that the revised pension w.e.f 1.1.2006 under para 4.2 of OM dated 1.9.2008 would not be reduced based on the qualifying service of less than 33 years. The appeals filed by Department of Revenue in the Hon'ble Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CAT High Court in several other cases also.

6. *The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (Wherever applicable) corresponding to the prerevised pay scale as per fitment table without pr-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Accordingly, Para 5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006."*

11. In a judgement rendered by Hon'ble Kerala High Court in OP (CAT) No. 169 of 2015 in the case of *Pay and Accounts Officer (Revenue) v. N.R. Purushothama Pillai* relied upon the judgement of the Hon'ble Apex Court in *Asger Ibrahim Amin v. LIC 2015(5) KHC SN 35* SC has held :

"a situation where a Junior Officer would draw more pension than his senior is also to be avoided. The resultant position that emerges from the pronouncement of the Central Administrative Tribunal as well as the different High Courts and the 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 to the one at which the incumbent has retired.

12. Thus we are not agreeable to the stand taken by the Respondent that OM 1/1/2008 dated 13.11.2009 cited by the Applicant herein is regarding upgradation and fixation of pay of existing employee on the implementation of 6th CPC as on 1.1.2006 is not for the pensioners is totally wrong in view of Hon'ble Supreme Court's decision in *D.S. Nakara & Ors v. Union of India 1990 (4) SCC 270* wherein it was held that denial of liberalised pension to those persons who are retired before cut off date prescribed was against the constitutional guarantee.

13. In view of what is stated above, original application is allowed. The respondents are directed to refix the pension of the applicant at 50% of the pay applicable to the post of Junior Telecom Officer revised to Rs. 9300-34800 with grade pay of Rs. 4600/- w.e.f. 1.1.2006 and applicant is entitled to revise his pension based on the grade pay of Rs. 4600/- and arrears thereon. This exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order.

14. No order as to costs."

11. Since the issue has already settled by various judicial pronouncements, this Tribunal is bound to follow the principle laid down on the matter and hold that the applicant succeeds and the respondents are directed to issue revised PPO to the applicant specifying the pension on the basis of 50% of the minimum of the pay in the pay band plus grade pay of Rs. 14430/- i.e. Rs.

7215/- w.e.f. 1.1.2006 and also the corresponding family pension and grant all consequential benefits including arrears of pension within a period of three months from the date of receipt of a copy of this order. Accordingly O.A.is allowed. No order as to costs.

(Ashish Kalia)
Judicial Member

sj*

Applicant's Annexures

- Annexure A7- True copy of the Letter
No.PAO/AIr/CHEN/PEN/2016-17/572 dt. 3.3.2017
issued by the 1st respondent.
- Annexure A1 - True copy of the PPO No. 285549200276
- Annexure A.2 - True copy of the Revision Authority
No.285549200276/1241961/A4 dt. 24.5.2013 issued
by the 2nd respondent.
- Annexure A.3 - True copy of the fitment table annexed to CCS (RP)
Rules 2008.
- Annexure A4. True copy of the order dt. 16.8.2013 in O.A. No.
715/2012.
- Annexure A5. Order in RP(C) No. 2565/2015 in SLP (C) No.
6567/2015 dt. 28.8.2015.
- Annexure A6. True copy of the representation on 10.10.2016.
- Annexure A8. True copy of the judgement in OP(CAT) No.
169/2015.
- Annexure A9. True copy of the order dated 16.3.2017 in OA No.
526/2016.

Annexures of Respondents

- Annexure R1 - True copy of PPO Authority
PAO/AIR/MS/PEN/V/204 dtd 27/7/1992.
- Annexure R2. True copy of PPO Authority No.
285549200276/1503526/A5 dt 30/12/2013.
- Annexure R3. True copy of fitment table F.No.38/37/09-P&PW(A)
dt. 28/01/2013 of DP&PW, New Delhi.
