

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00646/2017

Wednesday, this the 12th day of September, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

K.D.Francis,
S/o.K.C.Devassy,
Ex-Permanent Way Inspector,
Trivandrum Division, Southern Railway.
Residing at Thejus, Kalaparambath,
Kuzhur P.O., Mala, Trichur District.

...Applicant

(By Advocate – M/s.Varkey & Martin)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Chennai – 600 003.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum – 695 014.

...Respondents

(By Advocate Mr.C.B.Sreekumar)

This Original Application having been heard on 31st August 2018, the Tribunal on 12th September 2018 delivered the following :

ORDER

The applicant who is a pre 1.1.2006 railway pensioner filed this O.A seeking a direction to the respondents to revise and grant the pension by reckoning 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which he had retired. The reliefs sought in the O.A are as follows :

.2.

1. Call for the records leading to the issuance of Annexure A-4 and quash the same.
2. Declare that the applicant is eligible for revision of pension w.e.f 1.1.2006 as provided in Annexure A-2 OM dated 16.4.2016 and to direct the respondents to revise the applicant's pension on the above basis and disburse the same with all consequential benefits.
3. Grant such other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant who was selected as Apprentice Permanent Way Inspector in the year 1986, after the induction training was absorbed as Permanent Way Inspector in the Trivandrum Division in the scale of Rs.425-700. While continuing so, a major disciplinary action was initiated against him which culminated in the punishment of compulsory retirement with effect from 30.6.1999. The applicant was sanctioned and disbursed the pension and gratuity reckoning entire service upto 30.6.1999. It is stated in the O.A that vide Annexure A-2 O.M.No.38/37/08-P&PW(A) dated 16.4.2016 it has been clarified 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 corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. In the light of the aforesaid O.M the applicant has submitted Annexure A-3 representation. However the same was rejected by the 2nd respondent vide Annexure A-4. Aggrieved, he filed this O.A.

.3.

3. Per contra the respondents in their reply statement mainly contended that the applicant is not eligible for revision of pension since the benefit of O.M dated 1.9.2008 will not be applicable in the case of revision of pension/family pension in respect of pensioners who were in receipt of compulsory retirement pension and compassionate allowance under Rules 40 and 41 of the CCS (Pension) Rules, 1972 which correspond to Rules 64 and 65 of the Railway Services (Pension) Rules 1993.

4. Heard Shri.Martin G Thottan, learned counsel for the applicant and Shri.C.B.Sreekumar, learned counsel for the respondents. Perused all the documents, oral and documentary. The core issue raised in the O.A is whether the Railway Board Letter No.F(E)III/2008/PN1/12 dated 6.9.2011 (Annexure R-1) will be applicable or not. Learned counsel for the applicant has relied on the judgment of the Hon'ble High Court of Kerala in O.P. (CAT) No.2 of 2016 dated 7.1.2016. The relevant part of the judgment reads thus :

4. We heard Shri N. Nagaresh, learned Assistant Solicitor General of India appearing for the petitioners and Shri M.R. Hariraj, learned counsel appearing for the respondent. We have also gone through the impugned order. A reading of Annexure A6 indicates that the Government of India have taken the stand that the benefit of minimum pension pursuant to and in terms of the recommendations of the Sixth Central Pay Commission will not be available to those pensioners who have been compulsorily retired from service. The Government of India did not by Annexure A6 amend Rule 40 of the Central Civil Services (Pension) Rules, which reads as follows :

"40. Compulsory retirement pension:

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and

not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation - In this sub-rule the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of Rupees three hundred and seventy-five per mensem."

It is evident from a reading of Rule 40 that except in cases where an order is passed in consultation with the Union Public Service Commission, a pensioner governed by the said rule is entitled to full compensation pension. In the case of the respondent, though he was compulsorily retired from service pursuant to the initiation of disciplinary proceedings, an order reducing his pension in consultation with the Union Public Service Commission was not passed when he was compulsorily retired from service. Subsequently also, an order reducing his pension has not been passed. In such circumstances, we are in agreement with the Central Administrative Tribunal that Annexure A6 cannot be relied on to hold that the respondent is not entitled to the benefit of stepping up of pension to 50% of the minimum pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which he had retired. Though learned Assistant Solicitor General of India appearing for the petitioners contended, relying on paragraph 2.1 of Annexure A2 Office Memorandum dated 1.9.2008 that the recommendations of the Sixth Central Pay Commission applies only to pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules, that the respondent was drawing only compulsory retirement pension and not pension, he is not entitled to the reliefs prayed for before the Tribunal, we are afraid, the said contention is without any merit. **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 (Extraordinary 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.

(emphasis supplied)

.5.

5. The case of the applicant is squarely covered by the aforesaid judgment of the Hon'ble High Court of Kerala. The O.A is thus allowed. The respondents are directed to revise the pension of the applicant with effect from 1.1.2006 and consequential benefits arising therefrom shall be granted to him within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 12th day of September 2018)

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

asp

List of Annexures in O.A.No.180/00646/2017

1. **Annexure A1** – True extracted copy of the PPO issued in favour of the applicant.
 2. **Annexure A2** – True copy of the OM No.38/37/08-P&PW(A) dated 16.4.2016.
 3. **Annexure A3** – True copy of the representation/complaint dated 28.12.2016 submitted through railway web “Portal Nivaran”.
 4. **Annexure A4** – True copy of the Intimation bearing No.DPOTVCSR dated 12.1.2017 issued on behalf of the second respondent through applicant's email.
 5. **Annexure R1** – True copy of the Railway Board's letter bearing RBE No.120/2011 dated 6.9.2011.
 6. **Annexure R2** – True copy of the Office Memorandum No.38/37/08-P&PW(A) dated 22nd July 2011 issued by the Ministry of Personnel, Public Grievances & Pensions.
 7. **Annexure R3** – True copy of the Railway Board's letter bearing RBE No.49/2017 dated 22.5.2017.
-