

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
Original Application No.180/00637/2017**

Thursday, this the 15th day of November, 2018

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

K.Vasudevan, S/o.Late Nanu Nair, aged 75 years
Assistant Administrative Officer(Retd.),ICAR
Bindu Nivas, Kunniserry, Alathur
Palakkad District-678 681

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Applicant

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Chief Finance & Accounts Officer
ICAR -Central Rice Research Institute
Cuttak, Odisha – 753 006
2. Director General
Indian Council of Agriculture Research, Krishi Bhavan
New Delhi – 110 001
3. Union of India
Represented by its Secretary
Department of Pension & Pensioners' Welfare
South Block, New Delhi – 110 001

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Respondents

**(By Advocate – Mr.P.Santhosh Kumar for R 1 & 2 and
Mrs.P.K.Latha,ACGSC for R 3)**

This Original Application having been heard and reserved for orders on 9.11.2018, the Tribunal on 15.11.2018 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member:

Applicant is a pensioner. He retired as Assistant Administrative Officer w.e.f 30.04.2002 on superannuation in the pay scale of Rs.6500-10500. His pension was fixed at Rs.3508/- (Annexure A-1). On implementation of VIth Central Pay Commission recommendations, pension/family pension of pre 2006 pensioners were revised w.e.f 1.1.2006. Accordingly, pension of the

applicant was revised to Rs.7929/- in PB 2 with a grade pay of Rs. 4200/- as per letter dated 23.7.2009, a copy of which is available at Annexure A-3. Applicant submits that the pay band and grade pay shown in Annexure A3 is Rs.9300-34800 + 4200/- instead of Rs.9300-34800 + 4600 Grade Pay. In this connection a true copy of the fitment table annexed to CCS (RP) Rules 2008 is produced and marked as Annexure A-4. Applicant submits that 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, a copy of which is available at Annexure A5.

2. Applicant pointed out the names of two officials viz; Mr.A.P.Sankaran, retired AAO and Mr.Bhadra Kumar.S, retired Assistant Administrative Officer of CSIR, who were given pension in the Pay Band Rs.9300-34800 with a grade pay of Rs.4600/-, copies of which are available at Annexures A-6 & A-7. Applicant contends that the first respondent should have revised the pension based on Annexure A-5 O.M and then the minimum pension would have been revised to Rs.8345/- being 50% of the minimum pay in the pay band Rs.9300-34800 with a Grade Pay of Rs.4600/-.

3. The applicant has in his possession a copy of the Revised Order of Pension w.e.f 24.9.2012 issued by the 1st respondent, a copy of which is available at Annexure A-9, as per which, the pension of the applicant was revised to Rs.8145, which is the minimum pension in the pay band Rs.9300-34800 with a grade pay of Rs.4200/- (Annexure A-10). Applicant submitted

a representation to the first respondent requesting him to grant the minimum pension of Rs.8345/- with Grade Pay Rs.4600/- w.e.f 1.1.2006, a copy of which is available at Annexure A11. The first respondent replied that as per the fitment table circulated in letter dated 13.2.2013 (Annexure A12), the grade pay is shown as Rs.4200/-and as such the minimum pension is shown as Rs.8145/- . Therefore, the applicant filed O.A No.144/2016 and same was disposed of by this Tribunal directing the respondents to consider the revision of pension based on Annexure A-5 O.M, a copy of which is available at Annexure A17. First respondent again rejected the request on the basis of Annexure A-20 O.M dated 11.2.2009 which states that “the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners.”, a copy of which is available at Annexure A-18. Aggrieved by the inaction of the respondents the applicant has filed the O.A. seeking the following reliefs.

- “ (i) To call for the records leading up to the issue of Annexure A-18 and quash the same
- (ii) To direct the respondents to revise the pension of the applicant based on the grade pay of Rs.4600/-in the pay band Rs.9300-34800 w.e.f 1.1.2006 and pay the arrears with interest @ 12%p.a with in 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.”

4. 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 A14 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”.

5. 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.14 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 Petition was filed before the Hon'ble Supreme Court and that was also dismissed vide Annexure A.15. It is submitted that in Annexure A.15 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.”

6. Learned counsel for the applicant submitted that Shri T.K. Radhakrishnan Pillai an Inspector of Central Excise who voluntarily retired on 31.12.2000 has filed O.A. 579/2013 for revision of pension based on the revised pay band plus grade pay i.e. Rs.9300-34800 plus GP Rs.4600/- applicable to Inspector of Central Excise w.e.f. 1.1.2006. The pay scale of Inspector of Central Excise which was Rs.5500-9000, was upgraded to Rs. 6500-10500 w.e.f. 21.4.2004. The O.A. was allowed on 31.1.2014 vide Annexure A-16. In para 8 of the order it was held thus:

“Annexure A9 dt. 1.5. 2013 is quashed. The respondents are directed to issue revised Pension Payment Order to the applicant specifying the pension on the basis of Annexure A4 and A6 and para 4.2 of the OM dt. 1.9.2008 i.e. 50% of the minimum of the pay in the pay band plus grade pay of the Inspector of Central Excise which is Rs.12090 + Rs.4600 GP 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 two months from the date of receipt of a copy of this order.”

(Emphasis added)

7. The respondents filed a written statement and have resisted the claim of the Applicant. It is submitted by them that pension of the applicant has been revised in accordance with 6th Pay Commission as per Annexures A2 to A5. As per Annexure A-20 O.M dated 11.2.2009, Govt. of India has instructed to fix the pension of pre-2006 pensioners based on the pay corresponding to the pre-revised pay scale from which the pensioner has retired. Accordingly, pension of the applicant has been fixed as per Annexure A-6. The correct fitment table applicable to the applicant is contained in O.M No.38/37/08-P&PW dated 28.1.2013, a copy of which is available at Annexure R1(a). Pension of the applicant has been revised as per Annexure A-6 based on the OM under Annexure A-5. They further submit that being a pre-2006 pensioner applicant is not entitled for Grade Pay of Rs.4600/- as in the case of Mr.Bhadrakumar who had been continuing in service.

8. The respondents submitted that revision of pension of all pre-2006 pensioners has been revised on the recommendation on 7th CPC and a OM No.38/37/2016-P&PW(A) dated 12.3.2017 and 6.7.2017 has been issued by Department of Pension and Pension Welfare vide Annexure R1(c). The revision of pension entitled to pre-2006 pensioners with pre-revised pay scale of Rs.6500-200-10500/-has been revised according to the concordance table No.24 & 25 of the above O.M wherein Rs.4200/-Grade Pay has been taken into consideration corresponding to the above pay scale. According to the respondents, applicant is not entitled for any of the reliefs sought for in

the OA. and hence it is liable to be dismissed.

9. The applicant has also filed rejoinder thereto and submitted that the Hon'ble High Court of Delhi has already quashed the O.M dated 11.2.2009 to the extent it states that the benefit of upgradation of posts subsequent to the retirement would not be admissible to the pre-2006 pensioner's. The SLP filed against it was also dismissed. Applicant relied on the Order in O.A 579/2013 and as per Annexure A-16, applicant therein was granted a pension of Rs.8345/- and it was implemented. While implementing the 7th CPC recommendations, the applicant's pension is to be fixed in Pay Matrix 7 taking into account the grade pay of Rs.4600/- and if the revised pension is not fixed based on the grade pay of Rs.4600/-, the applicant will be in heavy loss.

10. Heard the learned counsel appearing on both sides and perused the pleadings at length as well as the judgments cited by the learned counsel for the parties.

11. The question raised before this Tribunal is whether the pensioner is 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 inntroduction of the revised pay scale with those retired thereafter.”

12. 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 delinked 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 fitmet 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."

13. In a judgment 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.

14. Thus we are not in agreement with 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 and is not for the pensioners. Such a stand would be 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 violative of constitutional guarantees.

15. 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 Assistant Administrative 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.

16. The Original Application is allowed as above. No order as to costs.

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

List of Annexures

Annexure A1 - True copy of the PPO No.CICFRI/674(913)C

Annexure A2 - True copy of Letter No.Audit/Pen/913/2002/2106 dated 12.6.2002

Annexure A3 - True copy of letter No.Audit/Pen/913/2002 dated 23.7.2009

Annexure A4 - True copy of the fitment table annexed to CCS (RP) Rules 2008

Annexure A5 - True copy of the OM F.No.1/1/2008-IC dated 13.11.2009 issued by the 3rd respondent

Annexure A6 - True copy of the Revised Pension Order No.AA/Pension/766/2009 dated 22.12.2009

Annexure A7 - True copy of the Pay Fixation Statement Shri.Bhadrakumar.S

Annexure A8 - True copy of the letter No.Audit/Pen/Misc/2012/1753 dated 1.10.2012 issued by the Finance and Accounts Officer of the central Island Fisheries Research Institution

Annexure A9 - True copy of the letter No.LB/PEN/ICAR/CRRI/2015/120 dated 30.4.2015

Annexure A10 - True copy of the letter No.Audit/Pen/913/2002/C-270 dated 4.2.2015

Annexure A11 - True copy of the representation dated 28.9.2015

Annexure A12 - True copy of the letter No.Audit/Pen/913/2002/C-270/3505 dated 26.10.2015

Annexure A13 - True copy of the letter No.Audit/Pen/913/2002/C-270 dated 23.1.2016

Annexure A14 - True copy of the order dated 16.8.2013 in O.A No.715/2012

Annexure A15 - True copy of the Order in RP No.2565/2015 in SLP 6567/2015

Annexure A16 - True copy of the Order dated 31.1.2014 in O.A No.579/2013

Annexure A17 - True copy of the Order in O.A No.144/16 dated 13.11.2009

Annexure A18 - True copy of the Order F.No.Audit/Pen./913/2002/CRRI-270/5022 dated 5.1.2017 issued by the 1st respondent

Annexure A19 - True copy of the judgment of the Hon'ble High Court of Delhi in Ramphal v. Union of India (WP(C) No.3035/2016) dated 3.8.2016

Annexure A20 - True copy of the OM F.No.38/37/08-P&PW(A) dated 11.2.2009

Annexure R1(a) - True copy of the Office Memorandum F.No.38/37/08-P&PW(A) dated 28.1.2013

Annexure R1(b) - True copy of the Office Memorandum F.No.38/37/08-P&PW(A) dated 30.7.2015

Annexure R1(c) - True copy of the Office Memorandum F.No.38/37/2016-P&PW(A) dated 6.7.2017.
