

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00645/2017

Wednesday, this the 21st day of March, 2018

CORAM

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

Venkitachalam C.R., aged 65 years
Retired Postal Assistant, Alathur H.O.
S/o C.S.Ramachandra Iyer
8/298, Vrindavan, Perinkulam,
Alathur, Palakkad-678 542.

Applicant

(By Advocate: Sri U.Balagangadharan)

versus

1. Union of India represented by
Secretary, Department of Posts
New Delhi-110 001.
2. The Secretary
Department of Personnel and Pensioners' Welfare
Lok Nayak Bhavan, Khan Market
New Delhi-110 003.
3. The Chief Post Master General
Thiruvananthapuram-695 033.
4. The Director of Accounts (Post)
Kerala Circle
Thiruvananthapuram-695 001.
5. Senior Superintendent of Post Offices
Palakkad Division
Palakkad-678 001.

Respondents

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

This OA having been heard on 7th March, 2018, the Tribunal delivered the following order on 21st March, 2018:

ORDER

This OA is filed by Sri Venkitachalam C.R., former retired Postal Assistant, aggrieved by Annexure A7 order dated 28.6.2017 rejecting his representation dated 13.5.2017 on the ground that as per Rule 40 & 41 of CCS (Pension) Rules, 1972, revision of pension is not allowable to the pensioners who retired compulsorily.

The reliefs sought in the OA are as under:

(i) To set aside Annexure A7

(ii) Direct the 4th respondent to revise the PPO of the applicant and sanction basic pension of Rs.3800/- with effect from 1.1.2006 and grant all consequential benefits including arrears of pension.

(iii) Declare that the applicant is entitled to get his pension revised to Rs.3800/- with effect from 1.1.2006 and he is further eligible for arrears of pension untrammelled by the order of the compulsory retirement.

2. Applicant was compulsorily retired from service on 20.7.2003 while working as Postal Assistant. He was issued a Pension Payment Order (PPO) sanctioning a monthly pension of Rs. 1275/- on pro rata consideration of having put in 14 years of service. Copy of the PPO is at Annexure A2. On adoption of the recommendations of the 6th CPC, Ministry of Personnel, Public Grievances and Pensions issued orders revising the pension of all Central Government employees including those who had retired prior to 1.1.2006 on the principle that no one shall draw pension less than 50% of the minimum of the scale of the post held by the pensioner at the time of retirement. After the applicant's retirement, the scale of pay of the post held by him had been revised with Grade Pay of Rs.2400/-. The applicant submits that he is entitled to get minimum 50% of the revised Pay Band plus Grade pay w.e.f. 1.1.2006 i.e., Rs.3800/- (5200+2400/2). However, in the revised PPO his pension is shown as Rs.3500/- w.e.f. 1.1.2006. The pension was again subjected to revision in 2013. However,

no change was effected in the basic pension fixed already. Copy of the revised PPO dated 26.11.2013 is at Annexure A3.

3. Aggrieved by this, the applicant made a representation to the authorities on 30.4.2017. This came to be rejected by the 5th respondent on the ground that the revision of pension by the Department of Personnel and Pensioners' Welfare as per OM dated 6.4.2006 is not applicable to the pensioners who retired before 1.1.2006 as per Rules 40 & 41 of CCS (Pension) Rules. In defence to his claim, the applicant refers to the judgment of the Kerala High Court in OP(CAT) No.2/2016 dated 7.1.2016 wherein the issue whether an incumbent who has been compulsorily retired is eligible to get pay revision benefits as per the recommendations of the 6th CPC has been considered. The operative 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 O.P.(CAT) No.2/2016 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.”

4. In the reply statement filed by the respondents, the contentions of the applicant have been opposed. The Office Memorandum dated 1st Sept. 2008 of the Ministry of Personnel, Public Grievances & Pensions at Annexure R2 makes no reference to the case of compulsorily retired personnel and hence no identical benefit can be claimed by these sections. The reply statement also quotes another O.M., of the same department dated 22nd July 2011 wherein it is stated thus:

“3. It has now been decided that the benefit of para 4.2 of this Department's O.M. No.38/37/08-P&PW(A) dated 1.9.2008 [as clarified vide OM No.38/37/08-P&PW(A) (pt.1) dated 3.10.2008] will not be applicable in the case of revision of pension/family pension in respect of the pensioners who were in receipt of compulsory retirement pension and compassionate allowance under Rules 40 and 41 of CCS (Pension) Rules, 1972.”

5. I have heard Sri U.Balagangadharan, learned counsel for the applicant and Sri M.K Padmanabhan Nair, learned ACGSC. The claim of the applicant is on a narrow question whether an employee compulsorily retired can justifiably expect subsequent revision in pay as announced by the respondent No.1. It is seen that the OM declaring the revision in 2008 (Annexure R2) has no specific mention on this question. It is also true that in the subsequent OM seen at Annexure R1, this category of pensioners are excluded from revision. Learned ACGSC also drew our attention to the judgment of the Supreme Court in *Mahinder Dutt Sharma vs. Union of India and others*, AIR 2014 SC 2009, wherein the degree of delinquency of the dismissed/removed employee has been weighed against his entitlements. However, it is seen that the order of the High Court of Kerala in OP(CAT) No.2/2016 has settled the issue as it squarely covers this question leaving no room for any ambiguity whatsoever. Drawing analogy from this position, I am of the view that the OA is to be allowed. Accordingly it is allowed. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

Annexure A7: Copy of the order No.C-13(a)(2003-04)/2017-18 dated 28.6.2017 issued by the 5th respondent.

Annexure A1: Copy of the Memo No.F1/4/98-99 dated 21.7.2003 issued by the 5th respondent.

Annexure A2: Copy of the pension payment order No.15029/LPS/TVM of the applicant.

Annexure A3: Copy of the revised PPO No.1823/Pen-2/C.No./PPO No.15029/LPR dated 26.11.2013.

Annexure A4: Copy of the representation dated 30.4.2017 submitted by the applicant to the 4th respondent along with the acknowledgment card.

Annexure A5: Copy of the letter dated 13.5.2017 of the applicant to the 5th respondent.

Annexure A6: Copy of the communication No.C-13(a)(2003-04)/2017-18 dated 30.5.2017 of the 5th respondent to the 4th respondent.

Annexure A8: Copy of the judgment dated 7.1.2016 passed by the Hon'ble High Court of Kerala in OP(CAT 2/2016).

Annexures filed by the respondents:

Annexure R1: Copy of the O.M. No.38/37/08-P&PW(A) dated 22.7.2011.

Annexure R2: Copy of the O.M. No.38/37/08-P&PW(A) dated 1.9.2008.

Annexure R3: Copy of the letter dated 30.4.2017 from the applicant requesting for the revision of pension.

Annexure R4: Copy of OM No.CPAO/IT&Tech/Revision (pre-2006) 2016-17/8 Vol.VI/58 dated 13.6.2016.