CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00749/2017

Wednesday, this the 25th day of July, 2018

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

K.P. John,
S/o. Late K.J. Philip, Aged 80 years,
Junior Telecom Officer, Telecom Department (Retd.),
Chithira Bhavan, Palloot,
Ajanur P.O., (Via), Anandhashram,
Kanhangad – 671 531, Kasargode District. ..... **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1 The Controller of Communication Accounts,
5th Floor, BSNL Bhavan, Thiruvananthapuram – 695 033.

2 Secretary,
Department of Telecommunications,
Doorsanchar Bhavan, New Delhi – 110 001.

3 Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
Loknayak Bhavan, Khan Market,
New Delhi – 110 001. ..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This Original Application having been heard and reserved for orders on 19.07.2018, the Tribunal on 25.07.2018 delivered the following:

O R D E R

***Per:* Ashish Kalia, Judicial Member:**

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 fond 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. 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 pa6y 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. In para 8 of the order it was held that "*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)*

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. 1/1/2008-1c 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 10102006 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 retied. 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 averrmemts, 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 inntroduction of the revised pay scale with those retiered thereafter."*

In office Memorandum dated April 06, 2016 issued by the Department of Pension and Pensiioners' Welfare pertaining tro 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 Departgment'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.*
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> *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 Delhhi 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 pensiion/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.*
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> *5. In accordance with the order issued in implementation of the recommendatiion 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 yearsd. InO.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 theyhad 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.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

List of Annexures of the Applicant

Annexure A-1 - True copy of the Pay fixation statement dated 08.10.1990 issued by the Dt. Manager, Telecom, Kannur.

Annexure A-2 - True copy of the PPO No. TA/100-82/CNN/6.

Annexure A-3 - True copy of the Calculation sheet.

Annexure A-4 - True copy of the OM F. No. 1/1/2008-IC dated 13.11.2009 issued by the Government.

Annexure A-5 - True copy of the Order dated 16.08.2013 in OA No. 715/2012.

Annexure A-6 - True copy of the Order in RP © No. 2565/2015 in SLP © No. 6567/2015 dated 28.08.2015.

Annexure A-7 - True copy of the judgment in OP (CAT) No. 169/2015.

Annexure A-8 - True copy of the judgment of the Hon'ble High Court of Delhi in Ramphal Vs. Union of India (WP (C) No. 3035/2016) dated 03.08.2016.

Annexure A-9 - True coy of the representation dated 25.09.2016 submitted by the applicant.

List of Annexures of the Respondents

Nil.

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