

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00925/2016

Thursday, this the 8th day of March, 2018.

CORAM:

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

P.V. Paul,
Superintendent of Central Excise (Rtd),
36/1351, Poothokaran House, Chammany Road,
Kaloor, Cochin–682017.

..... **Applicant**

**(By Advocate – Mr. C.S.G. Nair &
Ms. Chandni Nair)**

V e r s u s

1. Union of India,
Represented by its Secretary,
Department of Personnel & Training,
North Block, New Delhi – 110 001.
2. Commissioner of Customs (Preventive),
Central Revenue Buildings, I.S. Press Road,
Cochin - 18
3. Commissioner of Central Excise & Customs,
Central Revenue buildings, I.S. Press Road,
Cochin – 18.
4. Pay & Accounts Officer,
Customs House, Willingdon Island,
Cochin – 682 009.

..... **Respondents**

(By Advocate – Mr. N. Anilkumar, Sr. PCGC)

This Original Application having been heard on 21.02.2018, the Tribunal on 08.3.2018 delivered the following:

ORDER

O.A.No. 925 of 2016 is filed by P.V. Paul, a retired Superintendent of

Central Excise aggrieved by the Memo C.No.II/25/7/2006-CCP dated 29.9.2016 in which it is stated that since the applicant was compulsorily retired from service, provisions of para 4.2 of OM dated 1.9.2008 would not apply, the period of unauthorized absence from 31.8.2004 to 13.9.2006 having been treated as non-qualifying service.

2. The reliefs sought in the O.A are as under:

- (I) To call for the records leading upto the issue of Annexure A13 and quash the same.*
- (ii) To direct the respondents to revise the pay of the applicant under the CCS (RP) Rules 2008 w.e.f. 1.1.2006 and grant all retirement benefits including pension based on the minimum pay in PB3 with a grade pay of Rs. 5400/-.*
- (iii) To direct the respondents to grant Rs. 10500/- as monthly pension being 50% of the minimum pay in PB-3 with grade pay of Rs. 5400/- w.e.f. 14.6.2006 within a stipulated period.*
- (iv) To direct the respondents to draw and disburse the balance amount of gratuity taking into account the minimum pay in PB-3 with a grade pay of Rs. 5400/- within a stipulated time.*
- (v) 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.*
- (vi) To grant costs of this OA.*

3. The applicant, a Superintendent of Central Excise, was issued with a Memorandum of Charges by the 2nd respondent proposing to hold an inquiry against him under Rule 14 of CCS (CCA) Rules, 1965 alleging that the applicant, on relief from Air Customs, Trivandrum on 5.8.2004 had absented himself without sanction of leave and did not obey the orders of competent authority to rejoin duty. An inquiry was held on 27.3.2006. Finding the applicant guilty of the Charges, the 2nd respondent, the disciplinary authority, imposed penalty of Compulsory Retirement of the applicant from

service w.e.f. 13.9.2006 under Rule 11(vii) of CCS (CCA) Rules, 1965. (Annexure A1).

It was also ordered in the penalty order that the applicant is not entitled for any gratuity.

4. After imposition of penalty, the 3rd respondent's office issued a relief report relieving the applicant from service in the AN of 13.9.2006. (Annexure A2). Appeal filed against Annexure A1 penalty order was rejected. Applicant filed OA No. 72/2013, which was allowed directing grant of 2/3rd of the gratuity which he was entitled to on the date of his compulsory retirement. OP (CAT) No.177/2015 was filed against the order in OA No.72/2013, wherein the respondents filed a statement stating that pension and other retirement benefits would be regulated in accordance with OM No.38/37/08.P&PW(A) dated 15.6.2010. The OP (CAT) was disposed of noting that Annexure A7 which is an order sanctioning pension to the petitioner had not been produced before the CAT, and reserving liberty to the petitioner to move the authorities concerned with a suitable representation seeking correction thereof. The applicant submitted a representation to the respondents on 29.7.2016 (Annexure A12). This representation was rejected by the 2nd respondent on the ground that the applicant, being a compulsorily retired pensioner, is not entitled for revision of pension based on Annexure A5. Applicant has stated that in an identical case OA No.640/2014, the Tribunal ordered to revise the pension based on Government Resolution at Annexure A5. The challenge to this order before the Hon'ble High Court was dismissed by judgment dated 26.5.2016.

5. The applicant submits that he was compulsorily retired from service only w.e.f. 13.9.2006 as per Annexure A1 order. As such he was in service upto 13.9.2006. Hence the pay of the applicant should have been revised w.e.f. 1.1.2006 under Rule 7(A) of the CCS (RP) Rules, 2008 and the retirement benefits calculated on that basis. Since

he was compulsorily retired w.e.f. 13.9.2006, he is entitled for pension w.e.f. 14.9.2016 as per Government Resolution No.38/37/08/P&PW(A) dated 29.8.2008 (AnnexureA5) which states:

“Linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extant benefit of adding years of qualifying service for purpose of computing pension/related benefits should be withdrawn as it would no longer be relevant.”

6. Showing his qualifying service as 27 years, 3 months and 25 days, the 4th respondent issued a letter to the CPAO, New Delhi for issue of PPO to the applicant (Annexure A7) in which applicant's pension was fixed at Rs. 4,467/- from 14.9.2006. Another letter (Annexure A8) was also sent revising his pension as Rs. 6232/- showing the pay band as PB-3 Rs. 15600-39100 with Grade Pay of Rs. 5400/- on the ground that the applicant is a pre-2006 pensioner. Actually applicant became a pensioner only w.e.f. 14.9.2006. Hence both Annexures A7 and A8 are not as per rules and have no validity. The CPAO issued the Special Seal Authority on 6.12.2013 (Annexure A10) showing the pension of the applicant as Rs. 6232/-. Applicant submits that he is eligible for pension of Rs. 10500/- per month as the minimum pay in Pay Band Rs. 15600-339100 plus Grade Pay Rs. 5400/- that is Rs. 21000/- per month.

7. As grounds applicant states that the revision of pension as intimated through Annexure A13 is liable to be set aside. Since applicant was compulsorily retired w.e.f. 13.6.2006, his pay should have been fixed under CCS (Revised) Pay Rules, 2009 and retirement benefits calculated on the basis of the pay which the applicant drew

on 30.8.2004 which is to be automatically revised w.e.f. 1.1.2006 as per Rule 7(1)(A)(i) of CCS (RP) Rules, 2009. Since the applicant did not exercise his option when the new pay rules came into force, he should be deemed to have elected for the new pay structure w.e.f. 1.1.2006. The pension and other retirement benefits granted to the applicant has to be regulated as per Annexure A5 resolution relating to post 2006 pensioners and CCS (Revised Pay) Rules. His further ground is that compulsory retirement pension is to be paid under Rule 40 of the CCS (Pension) Rules, which stipulates that the pensioner is entitled for full compensatory pension. If less pension is awarded, then UPSC should be consulted before such order is passed. No such consultation has been made in the present case. He has cited a judgment of the Hon'ble High Court in OP (CAT) No.2/2016 decided on 7.1.2016 in which it is stated that if an order reducing the pension was passed without consultation with UPSC, the pensioner is entitled for full compensation pension.

8. Per contra, the respondents have filed a reply statement refuting the allegations in the OA. The applicant while working in Air Customs, Trivandrum had applied for leave from 26.3.2004 to 30.8.2004, which was sanctioned. On his transfer to Customs Preventive Commissionerate, he was considered to have been relieved on 5.8.2004. However, applicant has not joined at the new station and requested for extension of leave on medical grounds continuously without any supporting document to show that he was indisposed. After an inquiry, the applicant had been imposed penalty of compulsory retirement w.e.f. 13.9.2006 and the period from 1.9.2004 to 13.9.2006 had been treated as non-qualifying service and his pension and other retirement benefits were regulated in accordance with Rule 33 of CCS (Pension) Rules, 1972. The relevant portion of Rule 33 of CCS (Pension) Rules, 1972 states:

"If a Government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave or had been under suspension, the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule."

9. The appeal filed against the punishment order had been rejected by the President vide order dated 3.9.2009. The direction in the OA No. 72/2013 passed by this Tribunal had been complied with and the applicant was paid 2/3rd of gratuity of Rs. 1,51,489/-.

10. The pension and other retirement benefits of the applicant had been regulated as per OM dated 15.6.2010 of Department of Pension & Pensioners Welfare wherein it has been stated that the Government servants who were on unauthorized absence as on 1.1.2006 and retired without joining duty, their pension and other pensionary benefits will be regulated in accordance with Rule 33 of CCS (Pension) Rules, 1972. The basic pay, immediately before proceeding on leave, was taken as the emolument for the purpose of pension and the pension was revised. In so far as the eligibility of the compulsorily retired employees is concerned, the OM dated 22nd July, 2011 [Annexure R1(b)] leaves no doubt. The OM needs to be quoted in full:

"No.38/37/08-P&PW(A)
Government of India
Ministry of Personnel, Public Grievances & Pensions,
Department of Pension, Pensioners' Welfare,
Lok Nayak Bhawan, New Delhi – 110 003.

Dated the 22nd July, 2011.

OFFICE MEMORANDUM

Sub: 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.

The undersigned is directed say that in accordance with para 4.2 of this Department's O.M. No. 38/37/08-P&PW(A) dated 1.09.2008, the revised pension of pre-2006 pensioners shall, in no case, be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.

2. Doubts have been raised in regard to the applicability of the above provision 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. The matter has been examined in the light of the instructions/orders issued after Fifth Central Pay Commission for revision of pension/family pension in such cases. It was clarified in this Department's O.M. No. 45/86/97-P&PW(A) dated 25.03.2004 that the provisions of O.M. dated 17.12.1998 relating to stepping up of pension to 50% of the minimum of the revised scale of pay as on 01.01.1996 of the post held by the pensioner at the time of retirement shall not be applicable in case of compulsory retirement pension and compassionate allowance.

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 01.09.2008 (as clarified vide OM No. 38/37/08-P&PW(A) (pt.I) dated 03.10.2008) 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.

4. This issues with the concurrence of Ministry of Finance (Department of Expenditure) vide their U.O. No. 152/EV/2011 dated 30.06.2011.

5. In so far as persons belonging to the Indian Audit & Accounts Departments, these orders issue after consultation with the Comptroller & Auditor General of India.

6. Hindi version will follow.

Sd/-
(Tripti P. Ghosh)
Director”

11. The Pay Band of Rs. 15600-39100 with Grade Pay of Rs. 5400/- stands for corresponding pay band of Superintendents who received 2nd ACP in 6th CPC. Note 3 of Rule 6.3 of CCS (RP) Rules states that persons who were on EL or any other leave as on 1.1.2006 which entitled them for leave salary will be allowed the benefit of the Rule. But the applicant was on unauthorized absence. Hence this option is not applicable to him. The applicant's unauthorized period of absence does not count as qualifying service for pension. The resolution stipulating the revised minimum pay is not applicable to persons who were retired on compulsory retirement. UPSC need to be

consulted only when pension is fixed less than full compensation pension. In the case of applicant, he was granted 2/3rd of normal pension and not compensation pension. For the aforesaid reasons, the respondents prayed for dismissal of the O.A

12. The learned counsel for the applicant filed a statement producing a copy of the judgment in *OP(CAT) No. 2/2016 – Union of India and other Vs. S.Radhakrishnan Pillai* (Annexure A15). This OP was filed against the orders of this Tribunal in OA No. 207/2012 wherein the Tribunal held that Rule 40 of the Central Civil (Services (Pension) Rules, 1972 recognizes the right of persons like the applicant who has been compulsorily retired from service to pension and that except in cases where pension has been reduced after following the procedure prescribed therein, the pensioner will be entitled to pension as in the case of any other person who has retired from service. It was also held that reduction of pension is not necessarily concomitant event in all cases of compulsory retirement, that a reduction of pension can be made only if a specific order in that regard has been issued in the order imposing penalty, that in the instant case such an order reducing the pension has not been passed and, therefore, Annexure A6 cannot operate. The Hon'ble High Court upheld the orders of this Tribunal vide its judgment in OP(CAT) No. 2/2016. Learned counsel states that applicant is a similarly situated person and so he is entitled to get the pension as sought for.

13. Shri C.S.G Nair, learned counsel for the applicant and Shri N. Anilkumar, Sr. PCGC appearing for the respondents have been heard and all documents/records perused.

14. It is incontrovertible that the applicant had continuously absented himself from 5.8.2004. He did not have any leave at his credit and was clearly on unauthorized absence until he retired from service on 13.9.2006. His absence called for disciplinary

action from the side of the respondents and he was compulsorily retired with effect from 13.9.2006 as per Annexure A6. The punishment was imposed after due process and the statutory appeal filed against the same was also rejected. Keeping aside his effort before this Tribunal for getting his gratuity and further litigation before the Hon'ble High Court, it can be seen that the case clearly attracts Rule 33 of CCS (Pension) Rules, 1972. The position has been reiterated in OM dated 15.6.2010 of Department of Pension and Pensioners Welfare. This relevant basis for calculating the pension of the applicant is the emoluments that he was drawing before he left on unauthorized absence. Further as he was a recipient of compulsory retirement pension, he would not be eligible to get 50% of the minimum of the revised scale of pay as on 1.1.2006.

15. Note 3 of Rule 6.3. of CCS (Revised Pay) Rules thus allow the benefit of leave salary for persons who are on EL or any other kind of leave as on 1.1.2006, but the applicant was on unauthorized absence and was not on any kind of leave. So the question of assigning an option to the applicant with effect from 1.1.2006 or any other date does not arise. Again the rule relating to consultation with UPSC is relevant only in cases where pension is fixed at a level less than full compensation pension. In this case the applicant was granted 2/3rd of the normal pension and was not a recipient of compensation pension. Thus on this count also he is not eligible for any relief. The analogy drawn with the orders of this Tribunal in OA 640/2014 is not relevant as the circumstances of this case are different from the ones in that OA.

16. In Annexure A10 PPO the Pay Band shown at Rs. 15600-39100 + Rs. 5400/- GP is only the Pay Band of Superintendents who had received 2nd ACP in 6th CPC. The applicant was never a recipient of this pay. The last pay drawn is correctly shown at Rs. 14888/- based on which the basic pension has been calculated. We do not

see any error or impropriety in the above calculation.

17. Based on the above reasoning, I am of the view that the OA is devoid of merit and is liable to be dismissed. Accordingly the OA is dismissed. No order as to costs.

*(E.K. Bharat Bhushan)
Administrative Member*

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List of Applicant Annexures

- Annexure A-1 - True copy of the order C No. II/10A/01/2005 Vig, CCP dated 13.09.2006 issued by the 2nd respondent.
- Annexure A-2 - True copy of the Relief Report issued by the 2nd respondent.
- Annexure A-3 - True copy of the Order in OA No. 72/2013 dt.31.08.2015
- Annexure A-4 - True copy of the OM. No. 38/37/08 P&P W(A) dt. 15.06.2010
- Annexure A-5 - True copy of the Government Resolution No. 38/ 3/ 0/-P7 PW(A) dt. 29.08.2008.
- Annexure A-6 - True copy of the OM F. No.38/37/08-P&P W(A) dt. 10.12.2009.
- Annexure A-7 - True copy of the letter dt. 9.7.2013.
- Annexure A-8 - True copy of the revision order No. CCCPHCR47 dt. 16.7.2013 along with calculation sheet issued by the 4th respondent.
- Annexure A-9 - True copy of the fitment table annexed to the CCS(RP) Rules 2008.
- Annexure A-10 - True copy of the Special Seal Authority issued on 06.12.2013.
- Annexure A-11 - True copy of the Judgment in OP(CAT) No. 177/2015 dt. 27.01.2016.
- Annexure A-12 - True copy of representation dt. 29.7.2016.
- Annexure A-13 - A true copy of the Memo.No.C.No.II/25/7/2006-CCP dt. 29.09.2016 issued by the 2nd respondent.

Annexure A-14 - True copy of the Judgment in OP(CAT) No. 108/2016 dt. 26.05.2016.

Annexure A-15 - True copy of the Judgment dt. 07.01.2016 in OP(CAT) No. 2/2016.

List of Respondents Annexures

Annexure R-1(a) - True copy of the Order in appeal dated 03.09.2009.

Annexure R-1(b) - True copy of the OM dated 22.07.2011.

PPS to Member