

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00960/2017

Thursday, this the 31st day of May, 2018

CORAM:

**Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

A.D. Janardhanan Nair,
S/o. Late Kesava Pillai, Aged 87 years,
Dy. Office Superintendent of Customs (Retd.),
Adampathil House (Temple View), Kaipuzha P.O.,
Kottayam – 686 602. **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

- 1 Pay & Accounts Officer,
Customs, Custom House Willington Island,
Cochin – 682 009.
- 2 Chief Controller,
Central Pension Accounting Office,
Trikoot II Complex, Bhikajicama Place,
R.K. Puram, New Delhi – 110 066.
- 3 Commissioner of Customs,
Custom House Willington Island,
Cochin – 682 009.
- 4 Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi – 110 001. **Respondents**

(By Advocate – Mr. M.K. Padmanabhan Nair, ACGSC)

This Original Application having been heard on 24.05.2018, the
Tribunal on 31.05.2018 delivered the following:

ORDER

Per U. Sarathchandran, Judicial Member

1. Applicant, an ex-service man who joined as Lower Division Clerk under respondent No. 3 retired on superannuation on 28.02.1989 after putting in qualifying service of more than 34 years including military service. At that time he was granted a pension of Rs. 869/- per month w.e.f. 01.03.1989. His pension was revised to Rs. 6750/- w.e.f. 01.01.2006. According to the applicant as per the CCS (Revised Pay) Rules, 2008 the pay scale of Deputy Office Superintendent of Customs – the post from which he had retired – was revised to Rs. 9300-34800 with a grade pay of Rs. 4200/-. According to the applicant by counting the minimum of said Pay Band and Grade Pay, which would come to Rs. 14430/-, his pension in terms of the 6th CPC ought to have been 50% of the said amount i.e., Rs. 7215/- w.e.f. 01.01.2006. Though the applicant sent representations to the respondents praying for revision of his pension there was no reply and hence he has approached this Tribunal seeking relief as under:-

- (i)To declare that the applicant is entitled for Rs. 7215/- as monthly pension w.e.f. 1.1.2006 and all other consequential benefits.
- (ii)To direct the respondents to issue revised PPO fixing the monthly pension as Rs. 7215/- w.e.f. 1.1.2006 and disburse the arrears of pension within a stipulated time.
- (iii)To direct the respondents to pay interest on the amount of arrears of pension payable @ 12% per annum.
- (iv)To direct the respondents to include the name of the widowed daughter of the applicant in the PPO for the purpose of family pension.
- (v)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)Grant cost of this OA.

2. Respondents filed a reply statement stating that as on the date of superannuation as Deputy Office Superintendent Level – 1 (DOS-LI) the applicant was in the scale of pay of Rs. 1600-2660 (4th CPC). This scale was successively revised as Rs. 5000-8000/- in the 5th CPC and as Rs. 9300-34800 with Grade Pay of Rs. 4200/- in the 6th CPC. The respondents contend that on implementation of the 6th CPC recommendation, he was rightly granted pension of Rs. 6750/- w.e.f. 01.01.2006 in terms of Annexure R1 OM issued by the department of Pensions and Pensioner's Welfare on 01.09.2008 which envisages that the revised pension shall in no case shall be lower than the 50% of the minimum of the pay band with grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Respondents pointed out that the post of Deputy Office Superintendent i.e., DOS-LI and analogous post DOS-LII were merged and the merged cadre was named as Deputy Office Superintendent and was placed in the upgraded scale of pay of Rs. 5500-9000 in the 5th CPC w.e.f. 20.09.2005 as per Annexure R2 order and that there was no retrospective effect given to the Annexure R2 merger and hence the benefit of merging is not applicable to the applicant as he had retired on 28.02.1989. The scale of pay of the applicant at the time of his retirement was Rs. 1600-2660/- (4th CPC) which was raised from 01.01.1996 to Rs. 5000-8000 (5th CPC) and from 01.01.2006 the said pay scale was raised to the Pay Band of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- (6th CPC) and hence the pension applicable to the applicant is Rs. 6750/-. Respondents pray for rejecting the OA.

3. A rejoinder was filed by the applicant refuting the contentions in the reply statement and contending that since the pay scale of DOS Level I was revised w.e.f. 01.01.2006 to PB 2 Rs. 9300-34800 (GP Rs. 4200/-) the applicant is entitled to 50% minimum of pay band and grade pay.

4. Heard both sides. The short question to be considered in this OA is whether the applicant is entitled to a declaration that he is entitled to Rs. 7215/- as monthly pension w.e.f. 01.01.2006 and other consequential benefits.

5. Relying on Annexure A5 common order of this Tribunal learned counsel for the applicant Shri. C.S.G. Nair submitted that the applicant is similarly situated as the applicants in Annexure A5 common order and hence he is entitled to get his pension fixed as applicable to Deputy Office Superintendent DOS Level I.

6. Learned ACGSC Shri. M.K. Padmanabhan Nair submitted that the applicant is actually claiming the benefits of the post of DOS under the Central Board of Excise and Customs after Annexure R2 order of merger of DOS-LII and DOS-LI, the merged cadre having a scale of pay of Rs. 5500-9000 w.e.f. 20.09.2005. Shri. M.K. Padmanabhan Nair pointed out that the applicant has retired long before such merger vide Annexure R2. He submitted that at the time of retirement of the applicant on 28.02.1989 he was in the 4th CPC pay scale of Rs. 1600-2660 and that the said scale was successively revised and in the 6th CPC the corresponding Pay Band is Rs.

9300-34800 with Grade Pay of Rs. 4200/- and therefore he cannot claim the higher scale of Rs. 5500-9000 of the merged scale which carries a higher Pay Band.

7. It has to be noted at the outset that the pay revision and revision of pension based on the 6th CPC have been brought into effect by the decisions of Government of India. Annexure R1 is the office memorandum dated 01.09.2008 conveying the Government's decision on the recommendations of the 6th CPC revising the pension of number of pensioners/family pensioners. The relevant provision in Annexure R1 reads as follows:

“4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall 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 the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.”

(emphasis supplied)

8. The most important portion of the aforequoted OM which tends to escape from the sight of a casual reader is that the revised pension shall in no case be lower than 50% of the minimum of the pay in the pay band plus **grade pay corresponding to the pre-revised pay scale from which the pensioner had retired**. One can not lose sight of the importance of the wordings of paragraph 4.2 because revision of pay and revision of pension is within the policy domain of the Government. When the Government of India's decision on the 6th CPC recommendations has been made clear in Annexure R1, every revision relating to pre-2006 pensioner has to go by paragraph 4.2 (*supra*) of the said OM. In this context we feel it

appropriate to quote relevant portion of the order passed by the co-ordinate Bench of this Tribunal at Chandigarh on 01.09.2016 in OA No. 060/00912/2015 which reads as follows:

“8. According to OMs dated 27.10.1997 and 17.12.1998 for revision of pension w.e.f. 01.01.1996, pension has to be revised according to fitment formula given therein and then the revised pension, if less than the minimum for the corresponding revised pay scale, was to be stepped up to the said minimum amount. Similarly, w.e.f. 01.01.2006 according to OM dated 01.09.2008 revised pension has to be fixed as per fitment formula given in para 4.1 thereof, and then as per para 4.2 thereof, the revised pension was in no case to be lower than 50% of minimum of the pay in the Pay Band + Grade Pay corresponding to the pre-revised scale from which the pensioner had retired. It is, thus, manifest from the bare perusal of these OMs that only pension had to be revised. There is no provision in the OMs for notional fixation of revised pay of the pensioners in the corresponding revised pay scales and then revising their pension. On the contrary, formula for fixing revised pension directly has been given in the OMs. According to the said formula, existing pension along with dearness pension etc. has to be taken into consideration and then some fitment weightage has to be given to arrive at the revised pension. For this purpose, even reference to corresponding revised pay scale is not there in the OMs. Reference to corresponding revised pay scale comes in the context of minimum pension. The revised pension should not be lower than 50% of minimum revised pay scale/Pay Band + Grade Pay corresponding to pre-revised pay-scale. In this context only, the revised pay-scale/Pay Band + Grade Pay comes into picture. There is no reference at all to notional fixation of pay in the corresponding revised pay-scale/Pay Band + Grade Pay for revising the pension of pensioners who had retired prior to 01.01.1996/01.01.2006. Thus, the very basis of claim of the applicants that their pay has to be notionally fixed in the in the revised pay-scale (for revising their pension) does not exist in any of the relevant OMs. It is, thus, manifest that revised pension of the applicants has been rightly fixed by the respondents w.e.f. 01.01.1996 and 01.01.2006, as detailed in chart (Annexure R-6)”

9. We are of the view that the aforesaid decision is squarely applicable in the instant case also. In the light of the above discussion, we hold that the OA has no merits and is only to be dismissed. We do so. No costs.

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

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

List of Annexures of the Applicant

Annexure A-1 - True copy of the PPO No. Custom/KO.11533 CR.

Annexure A-2 - True copy of the Revision Authority dated 16.12.2013.

Annexure A-3 - True copy of the representation dated 20.07.2016.

Annexure A-4 - True copy of the fitment table annexed to CCS (RP) Rules, 2008.

Annexure A-5 - True copy of the Order dated 16.08.2014 in OA No. 715/2012.

Annexure A-6 - True copy of the Order of the R.P.(C) No. 2565/2015 in SLP(C) No. 6567/2015.

List of Annexures of the Respondents

Annexure R1 - A true copy of OM F No. 38/37-08 P&PW(A) of Department of Pension & Pensioner's Welfare dated 01.09.2008.

Annexure R2 - A true copy of Order F No. A11013/16/2002 Ad. IV dated 20.09.2005.
