

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01071/2017

Tuesday, this the 23rd day of October, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Thomas Pothen, S/o. Late P.J. Pothan, aged 72 years,
 Assistant Postmaster (Treasury) (HSG I) (Retd.),
 Puthenpurakkal, Puthupally, Kottayam Dist.-686011. **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Director of Accounts (Postal),
 Kerala Circle, Trivandrum – 695 001.
2. Chief Postmaster General,
 Kerala Circle, Trivandrum – 695 033.
3. Union of India, represented by its Secretary,
 Department of Pension & Pensioners' Welfare,
 Loknayak Bhavan, Khan Market, New Delhi-
 110001. **Respondents**

(By Advocate : Mr. K. Kesavankutty, ACGSC)

This application having been heard on 11.10.2018 the Tribunal on
 23.10.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“(i) To declare that the applicant is entitled for revision of pension based on the pay band plus grade pay applicable to HSG I w.e.f. 1.1.2006.

(ii) To direct the respondents to issue revised PPO to the applicant specifying the pension on the basis of 50% of the minimum of the pay in the pay band plus grade pay of Rs.18460/- i.e. Rs. 9,230/- 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 found to be just and proper in the nature and circumstances of the case.

(iv) To grant cost of this OA.”

2. The brief facts of the case are that the applicant is a pensioner who retired as Assistant Postmaster (Treasury) (HSG I) from Kottayam on 31.10.2005. At the time of retirement he was drawing pay in the pay scale of Rs.6,500-10,500/-. On implementation of the 6th CPC recommendations, the pay scale of Higher Selection Grade I (HSG I) was upgraded to Rs. 74509-11500/- and revised to PB-2 with a Grade Pay of Rs. 4,600/-. As per the fitment table annexed to CCS (RP) Rules, 2008 the minimum pay in the Pay Band of Rs.9,300-34,800/- plus Rs. 4,600/- is Rs.18,460/-. Thus, 50% of that amount of Rs. 18,460/- is to be paid as pension i.e. Rs. 9,230/- w.e.f. 1.1.2006. The applicant is getting only an amount of Rs. 8,792/- as pension. The settled position is that the revised pension of the applicant should be calculated taking into account the upgraded pre-revised pay scale of Rs. 7450-011500/- which was revised to Rs. 9,300-34,800/- plus Grade Pay of Rs. 4600/- as per 6th CPC recommendations. The representations submitted by the applicant have not been replied so far by the respondents.

3. Notices were issued to the respondents. They have entered appearance through Shri K. Kesavankutty, ACGSC and filed a reply statement. It is contended by the respondents that as per paragraph 4.2 of OM dated 1.9.2008 the pension should in no case shall 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 has retired. The applicant has retired in the pay scale of Rs. 6500-10500/- and the corresponding pay scale in the revised pay structure as per 6th CPC is Rs. 9300-34800/- plus Grade Pay of Rs. 4200/-. Hence, fixation of the applicant is as per Govt. of India, Ministry of Personnel, Public Grievances & Pensions OM dated 1.9.2008 and his pension is revised @ Rs.8792/- with effect from 1.1.2006. As per para 5 of the OM dated 11.2.2009 the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners. Moreover, the Postal Directorate vide their letter dated 10.7.2013 clarified that the revision is to be made keeping in view the revised pay scale/Grade Pay corresponding to the pay scale from which the pensioner had retired and not the revised pay scale of the upgraded post. Therefore, the applicant is not eligible for revision of pension as per the upgraded scales.

4. Heard Shri C.S.G. Nair, learned counsel appearing for the applicant and Shri K.Kesavankutty, learned ACGSC appearing for the respondents. Perused the record.

5. In a similar matter in OA No. 180/315/2017 this Tribunal vide its order dated 25.9.2018 held as under:

“7. I have heard the learned counsel for the Applicant Mr. C.S.G.Nair and Mrs.Mini R.Menon, learned ACGSC for the respondents, perused the pleadings and carefully considered the rival submissions. I have also considered the judgments cited by the learned counsel for the applicant.

8. The facts are not in dispute. The grounds argued by the learned counsel for the applicant is that the applicant retired as Accountant on 31.7.1992. the pay scale of Accountant was upgraded to pre-revised pay

scale of Rs.5500-9000 and revised to Rs.9300-34800 with a grade pay of Rs. 4200/- w.e.f. 1.1.2006. The minimum pay in the said pay band plus grade pay is Rs. 14430/- and as such the pension is to be fixed at Rs. 7215/ w.e.f. 1.1.2006 being 50% of the minimum pay.

9. Learned counsel for the applicant submitted that applicant is similarly situated to the applicant in OA 715/2012 and the principle laid down in Annexure A4 order is squarely applicable to the applicant also.

10. During the course of arguments the learned counsel for the applicant brought the notice of this Tribunal that in an identical case this Tribunal had allowed the claim of the applicant in O.A. 180/749/2017 vide order dated 25th July 2018 which is reproduced as under for analysis:-

“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 found 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.

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-IC 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 01.01.2006 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 retired. 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 averments, 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 introduction of the revised pay scale with those retired thereafter.”

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 de-linked 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 fitment 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."

11. 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 judgment 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.”

11. Since the issue has already settled by various judicial pronouncements, this Tribunal is bound to follow the principle laid down on the matter and hold that the applicant succeeds and the respondents are directed to issue revised PPO to the applicant specifying the pension on the basis of 50% of the minimum of the pay in the pay band plus grade pay of Rs. 14430/- i.e. Rs. 7215/- 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 three months from the date of receipt of a copy of this order. Accordingly O.A. is allowed. No order as to costs.”

6. Since the issue has already been settled by various judicial pronouncements, this Tribunal is bound to follow the principle laid down on the matter and hold that the applicant succeeds and the respondents are directed to issue revised PPO to the applicant specifying the pension on the basis of 50% of the minimum of the pay in the pay band plus grade pay of Rs. 18,460/- i.e. Rs. 9,230/- 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 three months from the date of receipt of a copy of this order.

7. Accordingly O.A. is allowed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/01071/2017

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the PPO No. 7043/LPS/TVM
- Annexure A2** - True copy of the memo No. ST/3-3/2004 dt. 10.6.2005 issued by the 2nd respondent.
- Annexure A3** - True copy of the relevant portion of first schedule of Section II of CCS (Revised Pay) Rules, 2008.
- Annexure A4** - True copy of the fitment table annexed to CCS (RP) Rules, 2008
- Annexure A5** - True copy of the order dt. 16.8.2013 in OA No. 715/2012
- Annexure A6** - True copy of the order in RP © No. 2565/2015 in SLP © No. 6567/2015 dt. 28.8.2015.
- Annexure A7** - True copy of the judgment in OP (CAT) No. 169/2015.
- Annexure A8** - True copy of the order dt. 16.3.2017 in OA No. 526/2016.
- Annexure A9** - True copy of the representation dt. 16.7.2016.
- Annexure A10** - True copy of the representation dt. 5.4.2017.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of DOP&PW OM F. No. 38/37/08-P&PW(A) dated 11.2.2009 issued by Department of Pension & Pensioners' Welfare.
- Annexure R2** - True copy of Postal Directorate vide their letter NO. 26-17/13-PA(PEA) dated 10.7.2013 issued by Postal Accounts Wing.
- Annexure R3** - True copy of Ministry of Finance, Department of Expenditure, ID Note No. 20/EV/2016 dated 22.01.2016.

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