

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2943/2017

Reserved on : 01.08.2018.

Pronounced on : 03.08.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. J.D. Gupta (Retd), 84 years
(Ex.Principal, GBSSS No.2, Keshavpuram,
GNCTD, Delhi),
S/o Sh. Ram Jeevan,
C-191 (1st Floor) Sushant Lok-III,
Sector-57, Gurugram-122011.

.... Applicant

(through Sh. Deepak Verma, Advocate)

Versus

1. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi.

2. The Director (Education), GNCTD
Old Secretariat, Civil Lines,
Delhi.

3. The Dy. Director of Education,
Govt. of NCT of Delhi,
Zone-XI, Dist-NW-B,
FU Block, Pitampura,
Delhi.

.... Respondents

4. The Secretary,
Dept. of Pension & Pensioners Welfare,
Min. of P, PG & Pensions, Lok Nayak Bhawan,
New Delhi-110003.
(Proforma respondent)

(through Ms. Harvinder Oberoi, Advocate for R-1 to R-3 and Sh.
Rishabh Sahu, Advocate for R-4)

O R D E R

The applicant is pre-2006 retiree and his pension was fixed in the corresponding pay scale of Rs.3000-4500 (4th CPC) and revised to Rs.10000-15200 (5th CPC), from which he retired.

2. The applicant in the current O.A. retired as Principal from Government Boys Secondary School, 2, Keshav Puram, New Delhi in 1992. Through the medium of this O.A., the applicant is seeking correct fixation of his pension.

3. The applicant states that recommendations of the 6th CPC applicable w.e.f. 01.01.2006 were notified by Government of India vide Notification dated 29.08.2008. The post of Principal from which the applicant retired i.e. in the pay scale of Rs.10000-15200 has been upgraded to Rs.12000-16500 with the revised scale of PB3 + Grade Pay of Rs.7600. Part-B of the Notification containing these recommendations is available at Annexure-A2.

4. The Department of Pension and P.W. in its O.M. dated 11.02.2009 clarified that the "benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners" in which category the applicant falls. However, the CAT(PB) Full Bench in its order dated 01.11.2011 in OA-655/2010 allowed parity for the pensioners and quashed the clarificatory O.M.

dated 03.10.2008 and further O.M. dated 14.10.2008, which is also based upon clarificatory O.M. dated 03.10.2008 and O.M. dated 11.02.2009. It was directed to re-fix the pension of all pre-2006 pensioners w.e.f. 01.01.2006. This order of the CAT was upheld by Hon'ble High Court of Delhi. An SLP filed by Union of India was also dismissed by the Hon'ble Supreme Court thus the judgment of the Tribunal attained finality.

5. Relying upon the aforementioned Full Bench judgment dated 01.11.2011 in OA-655/2010 of CAT (PB), the Bangalore and Ernakulam Benches of CAT vide their judgments dated 08.03.2013 and 31.01.2014 allowed the benefit of upgraded scale (PB2+Grade Pay of Rs. 4600) to the pre-2006 pensioners while re-fixing their pensions. The judgment was upheld by Hon'ble High Court of Karnataka and an SLP filed was dismissed by Hon'ble Supreme Court.

6. The applicant avers that he is a similarly situated pre-2006 pensioner and seeks extension of benefit of the ratio of the aforesaid judgments. He represented for this cause on 09.02.2015 to the respondents and followed it up with periodical reminders as well as legal notice dated 09.12.2015 but respondents have failed to resolve his grievance. Aggrieved, the applicant has filed the current O.A. seeking the following relief:-

“(i) Re-fix the pension of the applicant w.e.f. 1.1.2016 in the correct corresponding scale PB 3 + Grade Pay Rs.7600 (Pre-revised Rs.12000-15,200) applicable to the Post of 'Principal' from which he retired.

- (ii) To issue a fresh PPO (Pension Payment Order) accordingly.
- (iii) Pay the admissible arrears w.e.f. 1.1.2006 along with 18% interest.
- (iv) Any other or further order the Hon'ble Tribunal deems fit in the interest of justice with costs."

7. In the short reply affidavit filed on behalf of the respondents, it is stated that pension of the applicant has been revised and a letter dated 21.09.2017 was sent to the Pay & Account Officer, Central Pension Accounting Office, Ministry of Finance, Govt. of India for doing the needful. Respondents state that since the applicant's PPO stands modified, hence the O.A. has become infructuous.

8. During the course of hearing, the learned counsel for the applicant Sh. Deepak Verma reiterated the issues already stated in the O.A. He drew my attention to order dated 08.03.2013 passed in OA Nos. 231 & 253 of 2012 by Bangalore Bench of Central Administrative Tribunal in which Clarificatory OM's dated 03.10.2008, 14.10.2008 and 11.02.2009 have been quashed and set aside. Para-8 of the said order reads as under:-

"....30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs."

8.1 Sh. Verma also referred to the order dated 31.01.2014 passed in OA-579/2013 of Ernakulam Bench of CAT, who have held that:-

"6. As regards the first point, the applicant relies on O.M. dated 13.11.2009 for the benefit of upgradation of the post of Inspectors of Central Excise to grade pay of Rs. 4600/-. According to the respondents it is not admissible to him as per para 5 of O.M. dated 11.02.2009. The Principal Bench of this Tribunal in paragraph 30 of the order dated 01.11.2011 in O.A. No. 655/2010 and connected cases, held as under :

"30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs."

(emphasis supplied)

As the O.M. dated 11.02.2009 has been set aside as above, the contention of the respondents that the applicant is not eligible for grade pay of Rs. 4600/- is not tenable."

8.2 He also relied upon the order of the Hon'ble High Court of Delhi passed on 03.08.2016 in Writ Petition (C)-3035/2016 while deciding the applicability of para-5 of O.M. dated 11.02.2009 notified by Department of Pension and Pensioner's Welfare concerning revision of pension of pre-2006 pensioners. The Hon'ble High Court has observed that:-

"15. The learned Counsel for the petitioner also brought to our notice a judgment dated November 20, 2014 passed by a Full Bench of the Central Administrative Tribunal, Principal Bench in All

India S-30 Pensioners Association Versus Union of India & Ors. wherein it has been held that 'there can be no disparity in the payment of pension to officers of the same rank who had retired prior to introduction of the revised pay scales with those who retired thereafter.'

25. We would also note that reliance placed on the Office Memorandum dated February 11, 2009 itself is misguided for the reason that Central Government SAG case was an appeal against the order of Central Administrative Tribunal dated November 01, 2011 wherein the Tribunal had set aside the Memorandum dated February 11, 2009. The decision rendered by the Division Bench of this court was also challenged before the Supreme Court but the same attained finality and quietus when the curative petition was dismissed on April 30, 2014. Needless to state the order dated February 10, 2016 having been passed subsequently, the respondents were duty bound to consider the case of the petitioner de hors the Memorandum dated February 11, 2009 and had the same been done, undoubtedly the petitioner would stand entitled to pension in sum of Rs. 9375/- per month as has been claimed by him.

27. Resultantly, the present petition is allowed. The order dated February 10, 2016 is quashed and OM dated February 11, 2009 to the extent it states that the benefit of upgradation of post subsequent to the retirement would not be admissible to the pre-2006 pensioners is quashed and a mandamus is issued to the respondents directing them to fix the pension of the petitioner in sum of `9375/- per month as given in the fitment table appended to the Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Pensioners Welfare Office Memorandum F.No. 38/40/12-P&PW (A) dated 28.01.2013 with effect from January 01, 2006. The petitioner would also be entitled to arrears of the pension as would be refixed by the respondents. The needful be done within a period of two months, failing which the petitioner would also be entitled to simple interest @ 9% per annum. There shall, however, be no order as to cost."

8.3 The learned counsel also placed reliance on another judgment of Hon'ble High Court of Delhi in **WP(C)-8113/2016** (Rajendra Vs. UOI & Ors.) decided on 14.09.2017. Here too, their Lordships observed that:-

"18....considering the fact that others similarly situated like the petitioner have also been restored the pension initially fixed under the VIth CPC at Rs.37,750/-, and the respondents not having even

assailed the orders passed in respect of other employees – particulars whereof have been noted hereinabove, we see no justification for denying equal treatment to the petitioner in the present case accordingly. The respondent cannot discriminate against the petitioner in the matter of fixation of his pension."

8.4 Sh. Verma cited another judgment of Hon'ble High Court of Delhi in **WP(C)-8922/2017** in **CM-36502/2017** (Adhyapak Shakti Manch, Delhi Vs. GNCTD & Anr.) dated 17.01.2018 wherein it has been held that:-

"7. Be that as it may, it cannot be denied that a clear principle was laid down by the Central Administrative Tribunal, which was accepted by this court and affirmed by the Supreme Court of India. The respondents are bound to give the benefit thereof to all similarly placed teachers irrespective of whether they were appointed before or after 1st January, 2006.

8. By the order dated 01.09.2017, the Supreme Court had issued specific directions to the Government of India which must be complied with. In fact, the denial of the benefits to the similarly placed teachers is not only unfair and unjust, but results in unnecessary and unwarranted litigation. The respondents actually were required to comply with orders not only *qua* the parties to the cases but also *qua* others similarly situated, which would have prevented invoking of the jurisdiction of this court by way of the present writ petition."

8.5 Drawing strength from the afore mentioned judgments, the learned counsel for the applicant Sh. Deepak Verma vociferously argued that injustice is being meted out to the applicant and that this must be rectified by directing the respondents to grant him his rightful pensionary benefits.

9. Per contra, the learned counsel for the respondents Ms. Harvinder Oberoi stated that as already submitted in the counter reply, the respondents have revised the applicant's PPO as per the

relief claimed by him in the current O.A. The respondents have issued O.M. dated 06.07.2017 for revision of pension of pre-2006 pensioners while implementing the recommendations of the 7th CPC and the pay of the applicant has been revised accordingly. She stated that a revised PPO dated 21.09.2017 has already been issued in pursuance of the said O.M. rendering the O.A. infructuous.

10. I have gone through the facts of the case carefully and considered the rival submissions made by both sides. It is indeed a matter of concern that despite orders of various judicial for a, starting from the judgment of CAT, Principal Bench, Hon'ble High Court of Karnataka , Hon'ble High Court of Delhi as well as the judgment of the Hon'ble Supreme Court on the issue, the respondents have managed to side track the issue, causing grave injustice and avoidable harassment to the applicant.

10.1 The plea of the respondents that they have revised the PPO of the applicant is not correct. The basic pay of the applicant has been shown as Rs.12723/- in the earlier PPO dated 15.06.2013 (Annexure-A5). The revised PPO (at page 6 of the counter reply), now issued by the respondents on 21.09.2017 again shows his basic pension as Rs. 12723/-, which is the same as reflected in the earlier PPO. No change has been made in the revised basic pension of the applicant while granting him the benefit of 7th CPC. In other words,

the respondents have totally ignored the orders of the Courts by which the O.M. dated 11.02.2009 has been quashed, which stipulated denial of upgradation of pension to pre-2006 pensioners. It is indeed unfortunate that the respondents have shown utter contempt to the orders of not only the Hon'ble High Court but also of the Hon'ble Supreme Court.

11. In view of the aforesaid discussions and the citations relied upon by the applicant, I have no hesitation in concluding that the relief prayed for by the applicant is fair and just. The respondents are accordingly directed to:-

(i) Refix the pension of the applicant w.e.f. 01.01.2006 in the correct corresponding scale in PB3 + Grade Pay of Rs.7600 (pre-revised Rs.12000-16500) applicable to the post of Principal from which he retired. In the relief clause, pre revised amount has wrongly been shown as Rs.12000-15200, which has subsequently been corrected to Rs.12000-16500 in the rejoinder filed by the applicant.

(ii) Issue a fresh PPO to the applicant.

(iii) Pay the admissible arrears to the applicant w.e.f. 01.01.2006. The interest, however, may be paid w.e.f. 17.03.2015 (the date when the issue attained finality by order of the Apex Court) at GPF rate.

(iv) This exercise must be carried out expeditiously and completed within a span of three months from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

/vinita/