

OA.No.170/00086/2015/CAT/Bangalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00086/2015

DATED THIS THE 31st DAY OF OCTOBER, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

V.Bhaskaran
 S/o Late B.Venkateshwara Naidu
 Aged about 76 years
 Retd. HSK-1
 SSE/Elect/TLD/UBL
 Residing at No.100
 Chalukyanagar, Gadag Road
 Hubli-580 020.
Applicant

(By Advocate Sri T.Narayana Swamy)

Vs.

1. Union of India
 General Manager
 South Western Railway
 Hubli-580 020.
2. The Divisional Railway Manager
 South Western Railway
 Hubli-580 020.
3. The Sr.Divisional Manager
 Financial & Chief Accounts Officer
 South Western Railway
 Hubli Division
 Hubli-580 020.
Respondents

(By Advocate Sri J.Bhaskar Reddy)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

"Issue a writ of mandamus or order or direction or any other appropriate writ directing the respondents to consider the

representation dated 8/9/2014 Annexure-A10 and fix the correct pay in V PC with effect from 1/1/1996 and rectify the wrong fixation of pension from 1/11/1997 thereafter and to pay the arrears with interest.”

2. The facts of the case as evident from records are as follow:

The applicant joined the services of the respondents in January 1968 and retired on 31.10.1997 as Technician Grade I (Electrical). The applicant retired from the service after the 5th Pay Commission came into force w.e.f. 1.1.1996. Prior to 1.1.1996, the applicant was in the pay scale of Rs.1320-2040 in the pay of Rs.1560 and thereafter he got the pay Rs.1600/-. On retirement his pension was calculated and fixed at Rs.728/- w.e.f. 1.11.1997. Subsequently his pension was revised as per ready reckoner in 5th CPC w.e.f. 1.11.1997. Further it was revised to Rs.5037/- when 6th Pay Commission came into force w.e.f. 1.1.2006. The same pension was further modified on 28.2.2014 in pursuance of RBE No.11/2013. The modified Pension Payment Order is at Annexure-A4.

3. The applicant submits that in pursuance of 5th Pay Commission recommendation, the artisan staff in the railways was granted normal replacement scales in terms of Railway Board letter dated 16.10.1997 and circular dated 30.11.1998(Annexure-A5). In terms of the said circulars the scales of artisans were revised to Rs.4500-125-7000 and accordingly his pay should have been fixed at Rs.4750 as on 1.1.1996 and at Rs.4875 as on 1.1.1997. Thus the pension of the applicant is required to be fixed based on the correct fixation of the pay under 5th CPC w.e.f. 1.1.1996. The new 5th Pay Commission scale as on 1.1.1996 equivalent to Rs.1560 in the scale of Rs.1320-2040 is Rs.5500 in the pay scale of Rs.4500-7000 and after increment it should come to Rs.5625/- w.e.f. 1.1.1997. Therefore, the pension should be calculated taking his last pay as Rs.5625 and the

OA.No.170/00086/2015/CAT/Bangalore Bench
calculation of pension on pro rata basis works as to Rs.2557 + DR.

4. The applicant submits that he represented the authority to rectify the same and he has also approached the pension adalat. He sought information under RTI for which they informed that his pension should be calculated based on the reckoner. Again the applicant submitted representation on 8.9.2014 providing the details and also enclosing a calculation according to which his pay and pension should have been fixed. However, the same has not been considered by the respondents. He submitted further representation on 31.10.2014(Annexure-A12) but without any result. Hence the present OA.
5. According to the applicant, the respondents calculated the pension based on the 4th CPC as evident from the Pension Payment Order dated 31.10.1997 and subsequently enhanced the same as per the reckoner whereas they should have fixed his pay as per the 5th CPC recommendation and then fixed the pension based on the same. Therefore, he submits that he is entitled to the relief as prayed for.
6. The respondents in their reply statement highlighted the fact of delay saying that OA is clearly barred by limitation. The applicant is slept over the matter since 1997 and gave representation only on 8.9.2014 i.e. after lapse of 17 years. Therefore, in terms of various judgments of the Hon'ble Apex Court, the OA should be dismissed on the ground of limitation alone.
7. The respondents further submit that the applicant retired on superannuation on 31.10.1997 and the 5th CPC recommendation was implemented during September 1998 w.e.f. 1.1.1996. The applicant retired from service in the pay scale of Rs.1320-2040 drawing pay Rs.1560/- as

on 1.1.96. The equivalent pay scale was Rs.4000-6000 and the equivalent pay of Rs.1560 is Rs.4800 as on 1.1.1996. The applicant's pay was revised in the scale of Rs.4500-7000 at Rs.4750 as on 1.1.1996 and subsequently fixed at Rs.4875 as on his date of retirement. The applicant's pay was revised as per the Railway Board's letter and the submission of the applicant that he has not got normal replacement scales is false and baseless.

8. The respondents further submitted that the claim of the applicant that his pay in the scale of Rs.4500-7000 shall be Rs.5500/- is incorrect and as per the ready reckoner for fixation of pay, the pay of the applicant in scale Rs.4500-7000/- is Rs.4875 and not Rs.5500 as on 1.1.1996. Therefore, further calculations made by the applicant are also incorrect. The respondents have clearly stated in Annexure-A8 that the applicant's pension has been fixed as per rules. Therefore, the pension fixed by the respondents does not require any revision. Hence the contention of the applicant does not merit any consideration.
9. The applicant has filed a rejoinder in which he virtually reiterated the position already stated in the OA and submitted that the new pay in the 5th CPC as on 1.1.1996 equivalent to Rs.1560 in the scale of Rs.1320-2040 is Rs.5500 in the scale of Rs.4500-7000. He also submits that if the pay and pension of the applicant is revised correctly, then also he is liable to be further benefits in terms of 6th Pay Commission recommendation.
10. The applicant has also filed a separate affidavit regarding delay and submitted that the ready reckoner applicable to the persons who were retired earlier was not available to him but after subsequent verification, he made representations from February 2013 onwards. Moreover, he submits

OA.No.170/00086/2015/CAT/Bangalore Bench that fixation of proper pension is a right conferred under the statute and in law. Since the respondents have not fixed the same properly, it takes away his fundamental rights and livelihood. Since fixation of pension is a continuous cause of action, the contention raised by the respondents with regard to the delay is not tenable and hence, the OA should be considered on merit.

11. Heard the Learned Counsel for the parties. Learned Counsel for the applicant highlighted the points made in the OA and submitted that the applicant's pay was wrongly fixed following the 5th Pay Commission recommendation. The applicant had retired in 1997 and if his pay had been correctly fixed at Rs.5500/- and not at Rs.4750/-, his pension would have been different. It would have also resulted in revision in the pension following 6th Pay Commission recommendation. Therefore, he continues to suffer loss in the pension drawn by him due to the wrong fixation of pay. On the issue of delay, he mentioned that initially the applicant was not aware of the wrong pay fixation. But subsequently he was of the view that it has been wrongly fixed. More over since the matter relates to pension, it is a continuous cause of action and hence delay should not be a deciding factor in awarding necessary benefits to him.

12. The Learned Counsel for the respondents again highlighted the issue of delay and submitted that following the 5th Pay Commission recommendation, the applicant's pay was fixed in the corresponding scale. He was drawing the pay of Rs.1600/- as on 1.1.1996 which was revised to Rs.4500-125-7000/- and as per ready reckoning, a person who is getting pay of Rs.1600/- shall be fixed at Rs.4875/- in the new scale. Accordingly the pay of the applicant was fixed. There was no case of any wrong

fixation of the applicant's pay on 1.1.1996 as claimed by him. Therefore, the contention of the applicant does not merit any consideration.

13. The respondents have raised the issue of delay. No doubt the applicant ought to have agitated over the matter of his pay fixation in 1.1.1996 if he was of the view that the pay fixation in his case has been done wrongly. However, as it has implication on his pension, we are inclined to take a sympathetic view in the matter. Therefore, we condone the delay and take up the matter on merits.

14. We have carefully considered the facts of the case and submissions made by either side. The issue relates to fixation of pay of the applicant following the 5th Pay Commission recommendation. It is an admitted fact that the applicant was drawing the pay scale of Rs.1600/- and was in the pay scale of Rs.1320-2040 prior to implementation of 5th Pay Commission recommendation. In terms of 5th Pay Commission recommendation, the S-7 grade having pay scales of Rs.1200-30-1440-30-1800, 1200-30-1560-40-2040 & 1320-30-1560-40-2040 was revised to 4000-100-6000. S-8 grade in the scale of Rs.1350-30-1440-40-1800-50-2200 & 1400-40-1800-50-2300 was revised to Rs.4500-125-7000. It appears from the Railway Board's Serial Circular No.302/98 dated 30.11.98(Annexure-A5) that the pay scale of Skilled Artisan Grade I was revised to Rs.4500-7000 from Rs.4000-6000. Therefore, the applicant's pay was fixed in the pay scale of Rs.4500-125-7000 as Artisan Gr.I. In terms of ready reckoner, a person drawing pay of Rs.1600 before the 5th Pay Commission is entitled to the pay of Rs.4875 in the new pay scale. Only a person drawing basic pay of Rs.1800 before the 5th pay commission is entitled to get his pay fixed at Rs.5500 in the new pay scale. Since the applicant was getting pay at

OA.No.170/00086/2015/CAT/Bangalore Bench
Rs.1600 as on 1.1.1996, he is entitled to Rs.4875 in the new pay scale.

Therefore, his fixation of pay at Rs.4875 following the implementation of the 5th Pay Commission recommendation seems to be correct and there is no anomaly as contended by the applicant. Consequently, based on this fixation, his pension was fixed and further re-fixation was done following the 6th Pay Commission recommendation. Since the fixation of pay following the 5th Pay Commission recommendation does not appear to have any anomaly, further claim of the applicant regarding his fixation of pension does not seem to have any merit.

15. Based on the available records and in the light of the discussions in the preceding paras, we are of the view that the contention of the applicant in the OA is clearly devoid of any merit and therefore the OA is liable to be dismissed. Accordingly, the OA stands dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00086/2015

Annexure-A1: Revised PPO dated 31/10/1997
Annexure-A2: Revised order dated 13/8/1998
Annexure-A3: Revised PPO dated 16/11/2010

Annexure-A4: Modified PPO dated 28/2/2014
Annexure-A5: Circular dated 30/11/1998
Annexure-A6: Representation dated 30/10/2013
Annexure-A7: RTI Application dated 1/7/2014
Annexure-A8: Letter dated 17/7/2014
Annexure-A9: Communication dated 19/8/2014
Annexure-A10: Representation dated 8/9/2014
Annexure-A11: Working sheet
Annexure-A12: Representation dated 31/10/2014

Annexures with reply statement:

NIL

Annexures with rejoinder:

NIL

Annexures with MA.225/2017 filed by the applicant:

NIL
