

OA.No.170/00100/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00100/2017

DATED THIS THE 31st DAY OF OCTOBER, 2018

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

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

V.M.Devamrutham
 S/o Late P.V.Mayan
 Aged 86 years, retired as Head Clerk
 Southern Railway, Mysuru.
 Residing at
 No.3623/5A, 2nd Cross
 Tilak Nagar
 Mysuru-570 021.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
 By Secretary
 Ministry of Railways
 Railway Board
 Rail Bhavan
 New Delhi-110 001.
2. The General Manager
 South Western Railway
 Hubballi-580 020.
3. The Senior Divisional Finance Manager
 South Western Railway
 Irwin Road
 Mysuru-570 021.Respondents

(By Advocate Sri N.Amaresh)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

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

- a) *To modify the order No.P.500/MYS/PEN/6122 dtd.17.05.2016, issued by the respondent No.3, Annexure-A7, by fixing the pension of the applicant on the basis that Rs.5000-8000/- was his pay scale (pre-revised) corresponding to the Pay Band*

Rs.9300-34800/- + grade pay of Rs.4200/- as on 01.01.2006.

b) Direct the respondents to extend consequential benefits to the applicant accordingly.

2. The applicant while working as Head Clerk in the Divisional Office of Southern Railway, Mysuru, retired on 31.05.1988 on attaining the age of superannuation. He was in the pay scale of Rs.1400-2300 at the time of retirement and had completed 30 years of service. His Pension Payment Order No.0606240071 is annexed at Annexure-A1. His pension was revised w.e.f. 01.01.1996 in accordance with the CCS(RP) Rules, 1998 fixing his pension in the revised scale of Rs.5000-8000 vide Revised Pension Payment Order dtd.Nil.1998(Annexure-A2). Thereafter his pension has been revised w.e.f. 01.01.2006 in accordance with the CCS(RP) Rules, 2008 and his pension is fixed at Rs.5581/- w.e.f. 01.01.2006 construing his pay scale as Rs.4500-7000(pre-revised) vide Revised Pension Payment Order dtd.05.01.2011(Annexure-A3). He submits that the pre-revised pay scale of Head Clerk is Rs.5000-8000 and not Rs.4500-7000 as mentioned in the above order. This has been clarified by the Department of Railways vide order dtd.19.01.2011(Annexure-A4). However the respondents did not rectify the mistake committed in fixing his pension w.e.f. 01.01.2006.
3. The applicant submitted a representation dtd.30.12.2011(Annexure-A5) to the 3rd respondent with a request to rectify the error in fixing his pension and re-fix the pension in the pay band Rs.9300-34800 + Grade Pay of Rs.4200 w.e.f. 01.01.2006. In response to the same, 3rd respondent issued an order dtd.03.05.2012 stating that his pension has been fixed in accordance with the Railway Board's letter dtd.02.02.2010(Annexure-A6) wherein it is stated that the pay scale of Head Clerk was Rs.4500-7000 as per the 5th CPC scale and accordingly the pension of the applicant has been fixed in pay band Rs.5200-

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20200 + Grade Pay of Rs.2800 and as such, there is no discrepancy in fixation of his pension.

4. The applicant submits that fixation of pension of the pre-2006 retirees has been the subject matter before the several Benches of this Tribunal and also High Courts. It has been held that the pension of the pre-2006 retirees has to be fixed based on the pay of the employee in the Pay Band + Grade Pay corresponding to the pay at the time of his retirement. The pension shall not be less than 50% of the minimum of the pay in the Pay Band + Grade Pay and not minimum of the pay of the Pay Band+ Grade Pay. This has been affirmed by the Hon'ble Apex Court and in spite of which, the error crept in the fixation of pension of the applicant w.e.f. 01.01.2006 has not been rectified. However, in view of the subsequent Court decisions to do away with fixation of pension on pro rata basis, the applicant has been waiting for revision of his pension. Finally the pension of the applicant has been revised to Rs.5585/- as on 01.01.2006 in terms of the order dtd.17.05.2016(Annexure-A7) doing away with the grant of pro rata pension. However, the error crept in the fixation of pension based on the pay scale Rs.4500-7000 instead of Rs.5000-8000 has not been rectified.
5. The applicant further submits that the impugned order at Annexure-A7 is arbitrary and unreasonable. There is no dispute regarding the pay scale of the applicant at the time of his retirement in 31.05.1988 which is Rs.1400-2300 and the corresponding revised scale as per CCS(RP) Rules, 1998 is Rs.5000-8000. The same has been noted in PPO at Annexure-A2 which has been confirmed by the Railway authorities also vide order dtd.19.01.2011. But while fixing the pension w.e.f. 01.01.2006 as per CCS(RP) Rules, 2008, the pre-2006 scale of the applicant was noted as Rs.4500-7000 instead of Rs.5000-

8000 which is purely an arithmetical error. Instead of rectifying the error, the 3rd respondent has sought to justify his stand in terms of the impugned orders at Annexure-A6 & A7. The 3rd respondent failed to consider the ground urged by the applicant in his representation dtd.30.12.2011 in an objective manner and redress the grievance of the applicant. As such, Annexure-A6 & A7 are liable to be quashed and the respondents are liable to be directed to fix his pension in accordance with above representation and extend consequential benefits to him.

6. The respondents have filed their reply statement wherein they have taken preliminary objection saying that the OA is barred by limitation as the request of the applicant for revision of pension/family pension has been rejected about 5 years back duly explaining the reasons vide office letter dtd.05.03.2012 and 03.05.2012 and now after expiry of about 5 years approaching this Tribunal is not acceptable in the eye of law. Hence, the OA is not maintainable and is liable to be dismissed with costs.
7. They further submit that the applicant had sought for revision of his PPO dtd:05.01.2011 vide his representations dtd.30.12.2011 and 09.03.2012 which have already been replied to. The applicant now challenges the modified PPO dtd.17.05.2016 which has been issued in accordance with the New Concordance Table issued by DOP & PW dtd.28.01.2013 & 30.07.2015 and Railway Board letter dtd.13.04.2016 without challenging the earlier PPO dtd.05.01.2011 and also without giving any representation in regard to modified PPO as well. Hence the prayer made in the OA is contradictory to the representation of the applicant dtd.30.12.2011.
8. They submit that after retirement of the applicant from service on superannuation on 31.05.1988, his pension was fixed at Rs.773/- in pay scale

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Rs.1400-2300 according to IV CPC w.e.f. 01.06.1988. On implementation of V CPC, the pension was modified at Rs.2469/- in scale Rs.4500-7000 w.e.f. 01.01.1996. In the said PPO, the scale of pay of the applicant in V PC was mentioned as Rs.5000-8000 instead of Rs.4500-7000 inadvertently. On implementation of VI CPC, the pension was modified further at Rs.5581/- in pay band Rs.5200-20200 + 2800(GP) w.e.f. 01.01.2006. In the said PPO, the scale of pay in V PC is clearly mentioned as Rs.4500-7000 not Rs.5000-8000 as was inadvertently indicated in previous PPO. It is submitted that as there is no error in fixing his pension, the question of rectifying the mistake committed in fixing the pension w.e.f. 01.01.2006 does not arise. The office is not aware about the letter at Annexure-A4 dtd.19.01.2011 as the said letter is not issued by Railway Board and hence, it cannot be treated as final and the respondents are not bound to act thereon. The respondents vide their orders dtd.05.03.2012 & dtd.03.05.2012 stated that the pension of the applicant is fixed in accordance with the existing provisions of Railway Board and DOP&PW and Railway Board's letters dtd.16.02.2009(Annexure-R1), 02.02.2010 & 13.04.2016(Annexure-R3). It is reaffirmed that the scale of pay/pay band(Grade Pay) corresponding to IV CPC pay scale of Rs.1400-2300 in the V CPC & VI CPC is Rs.4500-7000 and Rs.5200-2022(GP Rs.2800) respectively as has been indicated in S.No.9 of Annexure-1 of Dept. of Pension and Pensioner's Welfare(DOP&PW) OM dtd.14.10.2008 circulated on the Railways vide office letter dtd.18.10.2008 . From this, it is clear that granting the scale of pay/Pay band(Grade Pay) corresponding to IV CPC pay scale of Rs.1400-2300 in the V CPC & VI CPC is Rs.4500-7000 and Rs.5200-2022(GP Rs.2800) in the case of the applicant is just and correct and no revision of pension is warranted. And therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed.

9. We have heard the Learned Counsel for both the parties who have filed their written arguments note. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and reply statement.
10. We have gone through the main contentions of the applicant and reply of the respondents in detail. The matter involved relates to only one issue namely whether the persons in the pay scale of Rs.1400-2300 at the time of IV CPC are eligible to be fitted in the pay scale of Rs.5000-8000 or Rs.4500-7000 under the V CPC. As admitted by the applicant, he was in the pay scale of Rs.1400-2300 at the time of retirement. As brought out by the reply of the respondents and the detailed concordance table annexed to R1, it is clear that the pay scale of Rs.5000-8000 has been granted only in the cases where the pay scale had been Rs.1400-2600 as S-9 Grade. The applicant admittedly was in the pay scale of only Rs.1400-2300. The only support which he has for his contention for the higher pay scale of Rs.5000-8000 is the Pension Payment Order enclosed at Annexure-A2 in which the respondents have admitted that the pay scale of Rs.5000-8000 has been mentioned inadvertently. The applicant has produced another document at Annexure-A4 wherein a purported letter of Central Railway has been enclosed. The applicant has not been able to produce anything other than this for substantiating his claim that the scale of Rs.1400-2300 for Head Clerks of Ministerial Staff other than Accounts Dept. has been revised as Rs.5000-8000. The various orders of the Railway Board cited by the respondents are also of no assistance to the applicant's contention. The same has been reaffirmed as evidenced by the Railway Board's letter dtd.02.02.2010 enclosed along with Annexure-A6 by the applicant himself wherein it is clearly

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stated that the scale of pay corresponding to 4th CPC pay scale of Rs.1400-
2300 is Rs.4500-7000. We are unable to agree with the applicant and
therefore, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00100/2017

Annexure A1: Copy of the order dtd.01.06.1988
Annexure A2: Copy of the order dtd.nil.1998
Annexure A3: Copy of the order dtd.05.01.2011

Annexure A4: Copy of the circular dtd.19.01.2011

Annexure A5: Copy of applicant's representation dtd.30.12.2011

Annexure A6: Copy of the order dtd.03.05.2012 with the letter dtd.02.02.2010

Annexure A7: Copy of the order dtd.17.05.2016

Annexures with MA.No.347/2017 filed by the respondents

Annexure-MA1: Copy of Railway Board's letter dtd.19.04.2016

Annexures with reply statement:

Annexure-R1: Copy of Letter dtd.05.03.2012 along with Railway Board's letter
dtd.16.02.2009

Annexure-R2: Copy of representation dtd.09.03.2012

Annexure-R3: Copy of RBE No.35/2016
