

OA.No.170/00731/2017/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00731/2017

DATED THIS THE 19th DAY OF JUNE, 2018

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

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

T.Jayaraman
S/o.G.Thangavelu
Aged 79 years, retired as
Chief Telephone Supervisor
Central Telephone Exchange
Bengaluru-560 001.
Residing at No.88
Shanthi Avenue
Behind Post Office, White Field
Bengaluru-560 066.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Ministry of Personnel, Public Grievances & Pensions
Department of Pensions & Pensioners' Welfare
Lok Nayak Bhavan
New Delhi: 110 003.
2. The Secretary
Ministry of Communications
Department of Telecommunications & IT
Sanchar Bhavan, No.20, Ashoka Road
New Delhi-110 001.
3. The Controller of Communication Accounts
Department of Communications
1st Floor, Amenity Block
Palace Road
Bengaluru-560 001.Respondents

(By Advocate Shri M.Vasudeva Rao)

O R D E R

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

The applicant aggrieved by the non-revision of his pension by the respondents
has approached this Tribunal seeking the following relief:

- i. *To quash the order No.12/Legal (5)/OA 134-135/2013 dated 24.03.2016, issued by the respondent No.3, Annexure-A9,*
 - ii. *Direct the respondents to fix the pension of the applicant at 50% of the minimum of pay in the pay band (irrespective of the pre-revised scale of pay) plus grade pay corresponding to the pre-revised pay scale with effect from 01.01.2006 and extend consequential benefits accordingly in line with the terms of letter dated 28.03.2017, Annexure-A10.*
2. According to the applicant who is 79 years old, he worked as Chief Telephone Supervisor at the time of his retirement on 31.01.1995. He was in the pay scale of Rs.2000-60-2300-75-3200 and the same was revised to Rs.6500-200-10500 w.e.f. 01.01.1996 following the 5th Pay Commission. Following the 6th Pay Commission recommendation, the revised pension structure came into effect from 01.01.2006. The recommendations of the 6th Central Pay Commission were accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86 i.e. basic pension + dearness allowance (whichever is applicable) + dearness relief of 24% as on 01.01.2006 instead of 1.74(Annexure-A1). Subsequently, vide OM dtd.01.09.2008, it was stipulated that the fixation of pension will be subject to the provision that the revised pension, 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 applicant had retired(Annexure-A2). Vide OM dtd.13.11.2009, 3 pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and the grade pay of Rs.4600 which corresponds to the pre-revised scale of Rs.7450-11500 was granted to those employees who were in the pay scale of Rs.6500-10500(Annexure-A3). Since the applicant was drawing his pension in the scale of Rs.6500-10500, he became entitled to the grade pay of Rs.4600 in terms of the said OM. As the applicant was not allowed the benefit of the grade pay of Rs.4600 for the purpose of fixation of his pension, he approached this Tribunal along with the

OA.No.170/00731/2017/CAT/Bangalore Bench similarly situated pensioner in OA.No.134&135/2013. This Tribunal vide order dtd.13.03.2014 allowed in terms of order passed in OA.231&253/2012. In those OAs, the Tribunal vide order dtd.08.03.2013 allowed the prayer of the applicants therein directing the respondents to re-fix the pension of the applicant and others considering the grade pay of Rs.4600 w.e.f.01.01.2006(Annexure-A5). The said order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Karnataka in WP.No.49080-82/2013 and WP.No.55222-55223/2013. Both the WPs were dismissed by the Hon'ble High Court of Karnataka vide order dtd.06.03.2014(Annexure-A6). Again the respondents have approached the Hon'ble Apex Court challenging the above order in SLP(C) No.36148-36150/2013 and connected matters. The SLP was dismissed by the Hon'ble Supreme Court vide order dtd.17.03.2015(Annexure-A7). Therefore, the order of the Tribunal had attained finality. Since the respondents did not implement the order, the applicant submitted a representation to the respondent No.3 on 23.02.2016 with a request to re-fix his pension in accordance with the order passed by the Tribunal(Annexure-A8). In reply to the same, the respondent No.3 issued an order dtd.24.03.2016 declining to extend the benefit of the grade pay of Rs.4600 to the applicant and fix his revised pension accordingly(Annexure-A9). Aggrieved by the same, the applicant has approached this Tribunal seeking the relief as prayed for.

3. The respondents in their reply statement submit that subsequent to revision of pay scale w.e.f. 1.1.1996 under 5th CPC, the applicant's pension was revised in the corresponding pay scale of Rs.6500-200-10500. Subsequent to the implementation of 6th CPC, the applicant's pension was further revised in the corresponding pay band and grade pay i.e. Rs.9300-34800+GP Rs.4200. Thereafter, Govt. of India vide OM dtd.13.11.2009(Annexure-R1) had granted

the grade pay of Rs.4600 corresponding to pre-revised pay scale of Rs.7450-225-11500 in place of Rs.4200 in the pay band of PB2- Rs.9300-34800 to posts which were in the pre-revised scale of Rs.6500-200-10500 w.e.f. 1.1.2006. Subsequent to issue of the above said orders, the applicant has approached this Hon'ble Tribunal for grant of Rs.4600 grade pay for fixation of pension to pre-2006 retirees in OA.Nos.231/2012, 253/2012, 222-223/2013 & 134-135/2013. The Tribunal while adjudicating the matter had referred to the order passed by the Principal Bench of CAT in OA.No.655/2010 and allowed the OAs vide order dtd.8.3.2013. Thereafter, they mentioned that the matter was agitated before the Hon'ble High Court of Karnataka and also before the Hon'ble Apex Court and the SLP filed by the Union of India was dismissed. On dismissal of SLP.No.36148-50/2013 by the Hon'ble Apex Court, the DoP&PW issued an OM dtd.30.07.2015(Annexure-R6) according to which the pension/family pension of all pre-2006 retirees is to be revised in accordance with DoP & PW OM dtd.28.01.2013 w.e.f. 1.1.2006. Based on the instructions contained in the above OMs, speaking orders were issued to all the applicants in the OAs. Some of the applicants have filed CP.No.231/2015 & 21/2016 for non-compliance of the order of the Tribunal. While adjudicating the CPs, the Tribunal directed the respondents to allow the grade pay of Rs.4600 to the applicants. Accordingly, the applicants in the CPs were allowed the grade pay of Rs.4600 for calculation of pension w.e.f. 1.1.2006. The applicant in the present OA was not a party in any of the above mentioned CPs.

4. The respondents further submitted that in terms of the order of the Tribunal as well as the Principal Bench of the Tribunal in OA.No.655/2010, normal replacement for pre-revised scale of Rs.6500-10500 in PB 2 + GP of Rs.4200 was notified by the Ministry and the Grade Pay of Rs.4200 in respect of pre-revised scale of Rs.6500-10500 was upgraded to Rs.4600 much later in 2009.

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As such the pension of employees who retired before 1.1.2006 from the pay scale of Rs.6500-10500 would need to be only on the grade pay of Rs.4200. Based on the above, the impugned order dtd.24.03.2016 was issued. However, as per the direction issued by the Tribunal in CP.Nos.231/2015 & 21/2016 filed by some of the applicants, a speaking order was issued duly considering the grant of grade pay of Rs.4600. The applicant in the instant OA has also been issued with a speaking order dtd.13.12.2017 fixing his pension duly considering the grade pay of Rs.4600 as was done in the case of applicants in CPs.

5. According to the respondents, the minimum pay in pay band corresponding to pre-revised pay scale of Rs.6500-10500 in the fitment table is Rs.12090. As per para 4.2 of OM dtd.1.9.2008(Annexure-R4) read with OM dtd.28.1.2013 & 30.7.2015, sum of 50% of minimum of pay in the pay band corresponding to pre-revised scale of Rs.6500-10500 and grade pay of Rs.4600 amounts to Rs.8345 (i.e. 50% of 12090+4600)(Annexure-R5 & R6 respectively). In terms of the pension calculation sheet produced at Annexure-R7 the pension of the applicant who was drawing pre-revised pension at the rate of Rs.3860 as on 1.1.2006 amounts to Rs.8724 as per para 4 of OM dtd.29.8.2008 read with OM dtd.28.1.2013 & 30.7.2015 subject to minimum of Rs.8345 after duly considering the grade pay of Rs.4600.
6. The applicant has filed a rejoinder in which he submitted that the pay scale of Rs.6500-200-10500 has been upgraded to Rs.7450-11500 with the grade pay of Rs.4600 w.e.f. 01.01.2006 in terms of the OM dtd.13.11.2009 (Annexure-A4). Hence, the pension of the applicant requires to be fixed taking in to account his pay in PB-2 Rs.7450-11500 + Grade Pay of Rs.4600. The contention of the respondents that the upgradation of the pay scale Rs.6500-

200-10500 to Rs.7450-11500 in terms of OM dtd.13.11.2009 is not applicable to the retired employee is not correct. Accordingly, the calculation made by the respondents is contrary to the orders of the Full Bench of CAT, N.Delhi in OA.No.655/2010 dtd.01.11.2011 which has been confirmed by the Delhi High Court and subsequently by the Hon'ble Supreme Court.

7. The respondents have filed an additional reply statement practically reiterating the contentions already made in the reply statement and again referring to detailed calculation as given in Annexure-R7.
8. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while highlighting the contention already made in the OA submitted that the OA.No.134-135/2013 filed by the applicants was disposed of in terms of the order of the Tribunal dtd.08.03.2013 in OA.No.231 & 253/2012. In those OAs, it was clearly specified that the Grade Pay of Rs.4600 was allowed to the applicants. Therefore, the communication dtd.24.03.2016 interpreting that in terms of order of the Tribunal and order of Principal Bench of the Tribunal, the applicant is entitled to only grade pay of Rs.4200 for the pre-revised pay scale of Rs.6500-10500 and that the Tribunal had not directed to revise the pension keeping in view the Grade Pay of Rs.4600 is clearly erroneous and unjustified. While for others, they have submitted that they allowed the grade pay Rs.4600, but in the applicant's case, the order dtd.24.03.2016 mentioned that he will be allowed only the Grade Pay of Rs.4200. Again in the reply statement they submitted that the applicant is entitled to Grade Pay Rs.4600 like the applicants in other OAs. They have also given a calculation of pension at Annexure-R7. The stand of the respondents in their reply statement differs from their communication dtd.24.3.2016 and in any cases both stands are quite unjustified. He submits

OA.No.170/00731/2017/CAT/Bangalore Bench that the OM dtd.28.01.2013 relating to the revision of pension of pre-2006 pensioners is quite clear and the minimum pension applicable to the scale of PB-2 i.e. Rs.7450-11500 with Grade Pay of Rs.4600 comes to Rs.9230. Hence, he prayed for granting the relief as sought by the applicant.

9. The Learned Counsel for the respondents referred to Annexure-R7 showing calculation of pension and submitted that the applicant's pension was fixed at Rs.8724 which is higher than the sum of 50% of minimum of pay in the pay band corresponding to pre-revised scale of Rs.6500-10500 and grade pay of Rs.4600. Therefore, the applicant is not entitled to any further revision in his pension. On a query as to how the order dtd.24.03.2016 interpreted the order of the Tribunal allowing only the grade pay of Rs.4200 and said that the Tribunal had not directed to revise the pension keeping in view the Grade Pay of Rs.4600 which is not appropriate grade pay for pre-revised pay scale of Rs.6500-10500, he had no satisfactory answer. He only emphasised that even though the grade pay of Rs.4600 is allowed as per the revised calculation sheet, the pension will not undergo any revision.

10. We have carefully considered the facts of the case and submissions made by either side. The Office Memorandum issued by the Ministry of Finance on 13.11.2009 is quite clear. Para-3 of the said OM reads as follows:

3. Consequent upon the Notification of CCS(RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries/departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 1.1.2006. Further, in terms of the aforementioned provisions of CCS(RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-

10500 should be merged with the post in the scale of Rs.7450-11500.

11. When the applicant approached this Tribunal in OA.No.134-135/2013, the same was disposed of vide order dtd.13.03.2014 specifying that the matter is already covered by the order of the Tribunal in OA.No.231 & 253/2012 and disposed of accordingly. Therefore, the applicant has to be allowed similar benefit as that of the applicants in OA.No.231/2012 and connected matters. In those cases, the applicants have contended that they are entitled to the Grade Pay of Rs.4600 corresponding to pre-revised pay scale of Rs.7450-11500. When the grade pay corresponding to particular pay scale is allowed, it obviously means that it is corresponding to that particular pay scale only and not the lower pay scale. Therefore, in terms of OM dtd.13.11.2009 as well as from the order of Tribunal, it is quite clear that the applicant is entitled to Grade Pay of Rs.4600 which corresponds to Pay Scale of Rs.7450-11500 only. Hence, the order passed by the respondents dtd.24.03.2016 saying that the applicant is only entitled to Grade Pay of Rs.4200 corresponding to pre-revised pay scale of Rs.6500-10500 is completely erroneous and unjustified. If, according to the respondents as mentioned in their communication dtd.24.03.2016, the applicant is entitled to only grade pay of Rs.4200 for the pre-revised pay scale of Rs.6500-10500 and the Tribunal had not directed to revise the pension in terms of Grade Pay of Rs.4600 which is not grade pay for the pre-revised pay scale of Rs.6500-10500, then there was no justification for them to approach the Hon'ble High Court and Hon'ble Supreme Court against the order of the Tribunal. Therefore, the entire contention made by the 3rd respondent in his communication dtd.24.03.2016 is completely wrong and illogical and hence the same is quashed.

12. The respondents' contention that as per Annexure-R7 the applicant's pension is fixed at Rs.8724 which is higher than the pension arrived at by taking into

OA.No.170/00731/2017/CAT/Bangalore Bench account the grade pay of either Rs.4200 or Rs.4600 also does not appear to be correct. The OM dtd.13.11.2009 had clearly stipulated that the posts which were in the pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 will be granted grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 01.01.2006. This makes it evidently clear that the applicants were to be considered against the pay scale of Rs.7450-11500 with grade pay of Rs.4600. The revised pay and pension has to be calculated on that basis and that comes to Rs.9230. The manner of computing the pension by the respondents at Annexure-R7 is therefore completely wrong and bereft of any logic. Therefore, while holding that the revised calculation at Annexure-R7 made by the respondents is completely erroneous and unjustified, we direct the respondents to grant the revised pension of Rs.9230/- to the applicant w.e.f. 01.01.2006 along with consequential benefits within a period of one(1) month from the date of receipt of copy of this order.

13. The OA is accordingly allowed in terms of the above. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00731/2017

Annexure A1: Copy of the resolution of the Government dtd.29.8.2008

Annexure A2: Copy of the O.M. dtd.01.09.2008

Annexure A3: Copy of the O.M. dtd.13.11.2009

Annexure A4: Copy of the revised pension fixation statement dtd.26.02.2014

Annexure A5: Copy of the order dtd.13.03.2014 in OA.No.134-135 of 2013 & order dtd.08.03.2013 in OA.No.231 & 253 of 2013

Annexure A6: Copy of the order dtd.6.3.2014 in WP.No.49080-82 of 2013 & connected matters

Annexure A7: Copy of the order dtd. 17.03.2015 in SLP (C) No.36148-36150 of 2013 & connected matters

Annexure A8: Copy of applicant's representation dtd.23.02.2016

Annexure A9: Copy of the order dtd.24.03.2016

Annexures with reply statement:

Annexure R1: Copy of OM dtd.13.11.2009

Annexure R2: Copy of OM dtd.30.08.2008

Annexure R3: Copy of OM dtd.13.10.2008

Annexure R4: Copy of OM dtd.01.09.2008

Annexure R5: Copy of OM dtd.28.1.2013

Annexure R6: Copy of OM dtd.30.7.2015

Annexure R7: Copy of pension calculation sheet

Annexures with rejoinder:

-NIL-

Annexures with addl.reply statement:

-NIL-
