

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 30.08.2018

ORIGINAL APPLICATION NO. 060/00646/2017

Chandigarh, this the 1st day of October, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

1. Gurdev Singh Sandhe son of Shri Tara Singh aged 61 years, R/o H. No. 163-D, Model Town Patiala.
2. Baljinder Singh Chahal son of Sh. Piara Singh aged 61 years, r/o H. NO. 2123, Ranjit Avenue Block C, Amritsar (Punjab).

....APPLICANTS

(By Advocate: Shri P.M. Kansal, Advocate)

VERSUS

1. Union of India through its Secretary, Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, New Delhi-110003.
2. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
3. The Secretary, Central Pension Accounting Office, Deptt. of Expenditure, Ministry of Finance, Govt. of India, Trikkot-11 Bhikaji Cama Palalce, New Delhi-110065.
4. The Chief Commissioner, Central Excise, Chandigarh Zone, Central Revenue Building, Sector 17-C, Chandigarh.

....RESPONDENTS

(By Advocate: Shri Vinod K. Arya)

ORDER**AJANTA DAYALAN, MEMBER (A)**

The present Original Application has been filed by two applicants together, who are pre-2006 pensioners, feeling aggrieved by the impugned order dated 31.8.2016 (Annexure A-1) whereby their representation dated 13.6.2016 for revision of pension has been rejected. According to the respondent department, O.M. dated 6.4.2016 (Annexure A-10) delinking revised pension from qualifying service of 33 years is not applicable in cases of compulsory retirement pension and compassionate allowance under Rule 40 and 41 of CCS (Pension) Rules, 1972 and so the applicants' cases are not to be revised in terms of this O.M. The applicants have also challenged O.M. dated 13.6.2016 (Annexure A-1/A) and O.M. dated 22.7.2011 (Annexure A-1/B) whereby cases of compulsory retirement pension and compassionate allowance under Rule 40 and 41 of said Rules have been excluded from revision of pension post 6th Central Pay Commission and also from the applicability of O.M. dated 6.4.2016 for. The applicants have also sought that directions be issued to the respondents to revise their pension in terms of O.M. dated 6.4.2016 delinking pension from qualifying service of 33 years and to release all arrears of pension with interest and other consequential benefits.

2. The facts of the case are not in dispute. The applicant no. 1 was compulsorily retired on 8.10.1998. The inquiry report held the charges as not proved and UPSC also came to the conclusion that

the charges are not established and advised exoneration of the applicant. However, respondent no. 2 ordered compulsory retirement. Similar order has been passed for applicant no. 2. The applicants are being paid full pro-rata pension without any cut in pension since 9.10.1998.

3. The applicants' case is that they were compulsorily retired under Rule 40 of CCS (Pension) Rules, 1972. However, there are no two separate categories of pensioners and so government servants compulsorily retired under Rule 40 are to be treated at par with other pensioners. It is also argued that 6th Central Pay Commission recommendations mention only one general category of civilian pensioners and does not make any differentiation between Rule 40/Rule 41 retirees and other pensioners. As such, DoPT O.Ms re-fixing the pension for normal retirees should be made applicable to Rule 40/Rule 41 pensioners as well and any infringement of this principle is discriminatory and bad in law.

4. The respondents have stated that it is not mandatory for the President to agree with the findings of the Inquiry Report or the advice of UPSC. Reasons for disagreement have been recorded in the punishment order and only after considering all the relevant material, a penalty of compulsory retirement from service has been imposed on the applicants. It is also stated that as per O.M. dated 22.7.2011, para 4.2 of O.M. dated 1.9.2008 (Annexure A-3) is not applicable to Rule 40 and 41 pensioners. A specific O.M. dated 13.6.2016 (Annexure A-1/A) was also issued clarifying that cases of compulsory retirement are not to be revised in terms of O.M.

dated 6.4.2016 as they are not covered thereunder. It is also stated that the impugned O.Ms are valid and sustainable in law and no discrimination is being done to the applicants.

5. The applicants have also filed rejoinder wherein it stated that the recommendations of 6th Central Pay Commission were accepted by the Central Government by resolution of the Cabinet. However, there is no approval of the Cabinet to exclude the pensioners receiving pension under Rule 40 and 41 from drawing these benefits. Further, benefits under 6th Pay Commission cannot be denied on the basis of clarifications issued by a subordinate office at its own level without referring the matter to the Cabinet. Denial of this benefit also creates disparity as employees compulsorily retired after 1.1.2006 and allowed pension under Rule 40/Rule 41 will get the benefit of 6th Central Pay Commission and thus higher pension though employees retiring prior to 1.1.2006 will be deprived of this benefit and will get lesser pension. Similarly, discrimination will be created between employees retired after 1.1.2016 and getting benefit of 7th Central Pay Commission whereas those retired prior to 1.1.2016 will not be getting this benefit. The applicants have quoted judgment of Hon'ble Punjab and Haryana High Court rendered in CWP No. 19641/2010- **R.K. Aggarwal Vs. State of Haryana** decided on 21.12.2012 wherein it is held that pension of pre-2006 retirees needs to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and it is to be ensured that pension so fixed is such that it is not lower than 50% of the minimum of pay in the band

and grade pay thereon. It is, therefore, stated that similar relief needs to be granted for Rule 40 retirees and persons receiving compassionate allowance under Rule 41.

6. We have heard the learned counsels for opposing parties, have gone through the pleadings available on record and have also given our thoughtful consideration to the matter.

7. First of all, raising questions about findings of inquiry report and advice of UPSC is not relevant as the penalty order has not been challenged in the instant case. Further, the penalty order having been passed in the year 1998, it is unusually time barred now to do so. In any case, the Disciplinary Authority is not bound by the findings of the Inquiry Report or the advice of UPSC and the penalty order contains reasons for award of punishment. These have not been questioned in the present O.A.

8. Coming to the main issue, applicability of O.M. dated 6.4.2016 to Rule 40 and 41 retirees on the plea that this creates two artificial categories of pensioners is not acceptable. Even prior to 6th or 7th Pay Commission, Rule 40 and 41 retirees were getting pension different from normal retirees. Hence, this is a category not newly or artificially created by O.M. dated 6.4.2016 or other O.Ms. These were always different categories. The differentiation was on the basis of CCS (Pension) Rules, 1972. The provisions of the relevant Rules 40 and 41 are reproduced below:-

40. Compulsory retirement pension

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than ¹[full

compensation pension] or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the ¹[full compensation pension] admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

EXPLANATION. - In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of ³[Rupees three hundred and seventy-five] per mensem.

41. Compassionate allowance

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two - thirds of pension or gratuity or both which would have been admissible to him if he had retired on ¹[compensation pension].

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of ²[Rupees three hundred and seventy-five] per mensem.

Thus, we see that in terms of these Rules, the Competent Authority is empowered to compulsorily retire and withhold whole or part of pension of an erring government servant. Hence, receipt of differential pension by them could be a part of penalty. Such government servants are not at par with other normal retirees who do not have any penalty to undergo. Hence, there is no right of these government servants to be treated at par with normal retirees.

9. As regards the High Court order in R.K. Aggarwal (supra) quoted by the applicants, the facts of that case are quite different and are not applicable in the instant case. In that case the Hon'ble High Court had ordered some level of equity between pre-2006 retirees and post-2006 retirees. It is, however, important to remember that both these categories were normal retirees not under orders of any penalty. Even

here, the pension of pre-2006 retirees and those of post-2006 retirees is not exactly at par as pre-2006 retirees are only getting pension based on the minimum of pay in the pay band and grade pay whereas post 2006 retirees are getting pension based on actual pay drawn by them which will normally be always above the minimum. Removal of differentiation is being claimed by the applicants between pre-2006 retirees and post 2006 retirees for compulsorily retired pensioners whereas in fact such differentiation exists even for normal pensioners and has not been eradicated completely in spite of High Court order and other judgments quoted. In view of larger equity, these classes – pre Pay Commission retirees and post Pay Commission retirees – are being brought nearer to each other; but some difference still exists even within the normal retirees. In other words, parity of benefit between retirees after later Pay Commissions and those who have retired prior to implementation of later Pay Commissions is not a reality – even for normal pensioners. So, such differentiation can definitely not be expected to be erased for compulsorily retired pensioners or for pensioners in receipt of compassionate allowance.

10. The applicants have also argued that they should be entitled to the benefit of Pay Commission as they were getting full pro rata pension. Even this logic does not work. If a defaulting government servant is allowed pro rata pension of 100% and another government servant is allowed pro rata pension of only 75% of pension otherwise admissible to him, and if the pension of the first category of Rule 40 retirees is allowed to be calibrated with reference to 6th Pay Commission and not the pension of the other category receiving 75% of the pension, the differentiation between these two will become much more magnified than envisaged by the Punishing Authority. Hence, in our view if at all

any calibration is to be done for Rule 40/Rule 41 retirees, the same will be irrespective of the fact whether he is getting full pro rata pension or not.

11. It is also argued by the respondents that any modification in the decision of the Cabinet cannot be done at lower level. However, this is a general statement made by them without detailing the basis thereto. The Government business is run based on Allocation of Business Rules and Transactions of Business Rules. The Competent Authority for each approval is indicated therein. Matters that need to be placed before the Cabinet are clearly indicated in these Rules. It is not practical or feasible to get each and every amendment thereto to be approved by the Cabinet. Only important issues requiring the approval of the Cabinet as per these Rules are put up to the Cabinet. It is not indicated by the applicants as to how as per these Rules, the amendments required approval of the Cabinet. By and large only policy issues and issues requiring financial approval beyond prescribed limit are to be placed before the Cabinet. Other issues are approved by the respective Ministries as prescribed in the Allocation of Business Rules and Transactions of Business Rules. It is not established by the applicants that the impugned O. Ms. have been issued without the approval of the Competent Authority so designated.

12. It is also observed that a clarification has been issued way back in 2011 that para 4.2 of O.M. dated 1.9.2008 specifying that revised pension shall not be lower than 50% of the minimum of pay in the pay band + grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, shall not be applicable to cases of compulsorily retired pensioners and persons in receipt of compassionate allowance under Rule 40 and 41. Later, other O.Ms now

being impugned have been issued clarifying the stand of the Government.

13. It is also important to note that in compulsory retirement cases, curtailing of service of the erring government employee is an important part of the punishment imposed on him. In the instant case also, the punishment awarded to the applicants adversely affected their pension as pension was at that time dependent on number of years of qualifying service. Hence, even though full pro-rata pension was granted to the applicants, the same had adverse implications on their pension entitlement due to curtailment of their service. If his pension is now made irrespective of qualifying service, the punishment awarded to him by the competent authorities will get compromised which cannot and should not be the intention of any such grant. He cannot now be given such advantage that will go counter to the punishment awarded and will in fact interfere with the punishment. There is thus no logic in extending the benefit of O.M. dated 16.4.2016 to Rule 40 retirees.

14. In view of the discussion above, we find no illegality in these orders and find no reason for interference.

15. We, therefore, find that the O.A. is devoid of merits and is accordingly dismissed.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 01.10.2018
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