

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00326/2016

Date of CAV:22.01.2018.

Date of Order :20.02.2018.

Between :

Smt.C.Vajram, w/o Late Sarabheswara Rao,
aged 82 yrs, r/o H.No.2-2-647/36,
Central Excise Colony, Hyderabad-500 013.

... Applicant

And

1. The Chief Commissioner of Customs,
Central Excise and Service Tax,
Shulk Bhavan, Basheerbagh,
Hyderabad-500 004.

2. The Chairman,
Central Board of Excise & Customs,
M/o Finance (Revenue), North Block,
Central Secretariat, New Delhi-110 002.

3. The Secretary to Government of India,
M/o Per. PG & Pensions, Dept. Of Pensions
& Pensioners' Welfare, Lok Nayak Bhavan,
Khan Market, New Delhi-110 003.

... Respondents

Counsel for the Applicant ... Mr.E.Krishna Swamy,

Counsel for the Respondents ... Mr.K.Venkateswarlu, Addl.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant is the widow of the late Sri Sarabheswara Rao, who expired on 14.10.2011, after retiring from the post of Assistant Chief Accounts Officer (ACAO), Central Excise Department, on 30.11.1980. After the death of her husband, she was authorized family pension initially at Rs.4,677/-, which was later revised to Rs.4,887/- with corresponding DR from 15.10.2011.

2. The applicant submits that as per Para 4.12 of the Government of India Resolution dated 29.08.2008 accepting the recommendations of VI CPC, it has been decided as follows:

“.....The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty per cent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired.”

Further, the OM dated 17.12.1998 of the Department of Pension and Pensioners Welfare also provides as follows:

“Similarly with effect from 01.01.1996 family pension shall not be less than 30% of the minimum pay in the revised scale introduced with effect from 01.01.1996 of the post last held by the pensioner/deceased Government Servant. Accordingly, so far as persons governed by CCS (Pension) Rules, 1972 are concerned, orders contained in the following office memorandum of this Department as amended from time to time shall be treated as modified as indicated below.”

3. The applicant avers that this OM has neither been superseded or cancelled and that the aforesaid provision is now incorporated under Rule 54 (2) of the CCS (Pension) Rules, 1972.

4. The case of the applicant is that in the VI CPC, the post of ACAO is identified with Pay Band-2 Rs.9300-34,800/- + Grade Pay Rs.4600/-. Hence, the minimum pay of the post of the ACAO in the Central Excise Department is Rs.18,460/- and 30% of Rs.18,460/- works out to Rs.5,538/-, which would be the family pension to which she is entitled. Although she made a representation for grant of Family Pension at Rs.5538/- per month, the same was rejected by the authorities inspite of the judicial precedents and the matter having attained finality. She submits that one Sri T.Raghavan, who retired as Havildar prior to 01.01.2006 in the Central Excise Department, Kerala, filed OA.No.622/2013 claiming that he is entitled to the minimum pension of the upgraded pay with Grade Pay of Havildar at 50% of Rs.7330/-, which works to Rs.3665/-. This OA was allowed by the Ernakulam Bench of this Tribunal and was implemented with retrospective effect from 01.01.2006.

5. The applicant also points out that the respondents in the impugned letter dated 15.03.2016 have referred to certain office memorandums dated 11.02.2009 and 28.01.2013. However, the Hon'ble Supreme Court, vide its order dated 12.02.2015, has upheld the quashing of these OMs and held as follows:

“In short, the provisions of quashed OMs 03.10.2008, 14.10.2008, 11.02.2009 (clarifying for reduction is modified party based minimum revised pension, reduction in full min. rev. pension based on length of OS, denial of GP applicable for upgraded pre-revised scales, etc) can never be revoked.

Pension of all pre-2006 pensioners (without any proportionate reduction in minimum revised pension for those who rendered less than 33 years of qualifying service) need to be refixed w.e.f 01.01.2006 based on accepted recommendation of 6th CPC notified through resolution dated 29.08.2008, in accordance with the CAT PR BENCH, Delhi Judgement dated 01.11.2011 that attained legal finality by the Highest Court of Land.”

Even the Review Petition filed by the Union of India against the orders has been dismissed by the Hon'ble Supreme Court on 26.08.2015. It is further stated that the

scale of pay of Rs.6,500-200-10,500/- applicable to the post of ACAO in the V CPC was upgraded to the scale of pay of Rs.7,450-225-11,500/- with retrospective effect from 01.01.1996 notionally. Hence, the corresponding Pay Band and the Grade Pay identified with the scale of pay in the VI CPC is Pay Band-2 Rs.9,300-34,800/- with Grade Pay Rs.4600/-. In view of this, the minimum grade with Grade Pay of this post is Rs.18,460/- with effect from 01.01.2006 and the applicant would be entitled to family pension at 30% of the minimum of Rs.18,460/-, which works out to Rs.5,538/-.

6. The applicant has also drawn attention to the OM of the Ministry of Finance dated 13.11.2009, which states 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.6,500-11,500 as on 01.01.2006 by granting them grade pay of Rs.4,600/- 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.6,500-10,500 as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4,200 in the pay band PB-2; will be granted grade pay of Rs.4,600 in the pay band PB-2; corresponding to the pre-revised scale of Rs.7450-11500 w.e.f 01.01.2006. Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre-revised scale of 7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with post with the post in the scale of Rs.7450-11500.”

In view of this, the revised Pay Band PB-2 Rs.9,300-34,800/- + Grade Pay Rs.4600/- is identified with pre-revised scale of Rs.7,450-11,500/-, which is the upgraded pay of Rs.6,500-10,500/- pre-01.01.2006.

7. The respondents have filed a reply statement contesting the OA. In their reply statement, they submit that the pay scale of Assistant Chief Accounts Officer at the

time of retirement of Sri Sarabheswara Rao in the III CPC is Rs.650-30-740-35-810-EB-880-40-1000-EB-40-1200/- and the scale was revised to Rs.2000-60-2300-75-3200/- in the IV CPC and further revised to Rs.6500-200-10500/- in the V CPC. Further, in the VI CPC the corresponding Pay Band is Rs.9300-34,800/- with Grade Pay Rs.4200/-. Accordingly, the applicant's family pension is fixed based on the revised concordance table circulated vide letter F.No.38/37/08-P&PW (A), dated 28.01.2013, wherein it is clearly mentioned that family pension is 30% of the minimum pay in the pay band and grade pay corresponding to the pay scale from which the pensioner had retired. The family pension of the applicant works out to Rs.4,887/- as shown at Sl.No.13 of the revised concordance table.

8. The respondents submit that the Grade Pay of Rs.4600/- in respect of the posts which were in the pre-revised pay scale of Rs.6,500-10,500/- was upgraded subsequently outside the recommendations of the 6th CPC vide Annexure.IV OM dated 13.11.2009. It is the specific contention of the respondents that this upgradation is not applicable to those who were holding these posts prior to 01.01.2006 and had to retire before 01.01.2006. As such, the pension of those who had retired prior to 01.01.2006 is correctly revised keeping in view the Grade Pay of Rs.4200/-, which has specifically been provided in the Resolution dated 29.08.2008. The respondents also submit that the OM dated 13.11.2009 is not relevant for the pensioners who retired before 01.01.2006 because this order is applicable only in the revised pay structure. Further, the Resolution dated 29.08.2008 provides for only revised Grade Pay of Rs.4200/- in regard to past pensioners, and as such the subsequent decision contained in OM dated 13.11.2009 is not relevant.

9. It is also submitted by the respondents that the case law relied upon by the applicant is that in no case the family pension of a pre-2006 pensioner shall be

lower than 30% of the minimum of pay in the Pay Band + Grade Pay. The applicant's pension has been fixed on the above lines only. The respondents state that the Principal Bench in O.A.No.2553/2014, dated 15.02.2016 has also categorically pointed out that the question of admissibility of the benefit of upgradation of posts subsequent to their retirement was neither raised nor decided by the Full Bench of the Tribunal in OA.No.655/2010 and that the Full Bench did not direct the respondents to grant the benefit of upgradation of posts (subsequent to their retirement) to the pre-2006 pensioners while revising their pension with effect from 01.01.2006. Therefore, the decision of the Full Bench in **Central Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India** is not at all relevant in the case of the applicant. Thus, all the contentions raised by the applicant claiming revision of pension to Rs.5,538/- are devoid of any merit and are liable to be rejected.

10. It is also the case of the respondents that the Accounts wing of the Department is not an organized Accounts so as to claim the pay scale on par with Organized Accounts Department in terms of OM dated 28.02.2003 as no such posts, which are mentioned in the OM are existing in the Central Excise Department. The respondents have also relied on the orders of the Ahmedabad Bench of the Central Administrative Tribunal in OA.No.183/2013 regarding the claim for revised pension with reference to the minimum of the upgraded pay scale instead of the minimum of the corresponding pay scale in the case of a retired Member of the Income Tax Appellate Tribunal. The Tribunal dismissed the claim by observing that *"the argument of the applicant that the respondents while fixing Annexure 1 and 2 pay scales ought to have taken into account of the Annexure.A/6 Presidential Order by which the scale of pay of the Members in the ITAT was enhanced, seems to be too farfetched and ambitious"*.

11. The applicant has filed a rejoinder stating that the OM dated 11.02.2009, which has been produced by the respondents in support of their case has been quashed and set aside by the Full Bench of the CAT in OA.No.655/2010 & batch on 01.11.2015, which has been further upheld by the Hon'ble High Court in the judgment in ***Union of India Vs. K.Venugopal Nair*** on 12.02.2015. The applicant has also produced certain additional documents by filing M.A.No.276/2017 in which he has submitted a reply received by him in response to his application under RTI Act, which states that the scale of pay for ACAO is Rs.9300-34800 and GP Rs.4600 under VI CPC. He has also filed his written submissions pointing out that the submissions made by the respondents through their counsel that the post of Assistant Chief Accounts Officer in Grade Pay of Rs.4600/- does not exist is incorrect as can be seen from the reply received in response to his RTI application. He placed heavy reliance on the judgments of the Hon'ble Supreme Court in UNION OF INDIA REP., BY SECRETARY, DEPT. OF PENSION & PENSIONERS' WELFARE & OTHERS ETC vs. K.VENUGOPALAN NAIR RETD. SCIENTIST/ENGINEER-SG, VSSC & ANOTHER dated 12.02.2015 and the Hon'ble High Court of Punjab & Haryana in UNION OF INDIA vs. DARSHAN LAL BALI following its earlier orders dated 24.11.2011 in AGIA RAM vs. UNION OF INDIA and the orders of the Hon'ble High Court of Delhi in RAM PHAL vs. UNION OF INDIA in W.P.(C) No.3035 of 2016, dated 03.08.2016 and argued that in the light of these judgments, the contention of the respondents that the OM dated 11.02.2009 does not allow the benefit of the upgraded scale to persons who retired prior to 01.01.2006, is no longer valid or tenable.

12. Heard the learned counsel on both sides and perused the record.

13. The issues that are required to be decided in this case are -

(i) Whether the post of the Assistant Chief Accounts Officer in the Central Excise Department carries a Grade Pay of Rs.4600/- in the VI CPC.

(ii) Whether the applicant, who is the widow of a retired Assistant Chief Accounts Officer and a pre-2006 pensioner, is entitled to family pension with reference to the upgraded pay scale which came into effect after the retirement of her late husband.

14. As per the reply statement filed by the respondents, the pay scale of ACAO at the time of retirement of the pensioner was Rs.650-30-740-35-810-EB-880-40-1200/-. In the IV CPC, the scale was revised to Rs.2000-60-2300-75-3200/- and the same was further raised to Rs.6500-200-10500/- with effect from 1.1.2006. The respondents would contend that the corresponding pay band of the pay scale of Rs.6500-200-10500/- is Rs.9300-34800/- with Grade Pay of Rs.4200/-. However, we find that Annexure.IV OM granted GP of Rs.4600/- in PB-2 corresponding to the pre-revised scale of Rs.7450-11500/- to the posts which were in the pre-revised scale of Rs.6500-10,500/- on 01.01.2006. This OM states that consequent on the notification of the CCS (RP) Rules 2008, the Department of Expenditure, has received a large number of references proposing upgradation of the posts, which were in the pre-revised scale of Rs.6500-10500/- as on 01.01.2006 by granting them Grade Pay of Rs.4600/- in the Pay Band PB-2. After examining the matter, the Government decided that the posts which were in the pre-revised scale of Rs.6500-10500/- as on 01.01.2006 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/- with effect from

01.01.2006. Thus, it is clear that the post of ACAO carries a grade pay of Rs.4600/-. Further, the reply to RTI application, produced by the applicant, confirms that the scale of pay of ACAO is Rs.9300-34800/- with Grade Pay Rs.4600/- in the VI CPC. Thus, there is no doubt that the post of ACAO is in PB-2 Rs.9300-34800/- with Grade Pay Rs.4600/-.

15. Coming to the second issue, it was the applicant's contention that the OM dated 11.02.2009 denying the benefit of the upgraded pay scale was quashed by the Full Bench of this Tribunal and the same was upheld by the Hon'ble Apex Court, vide its orders dated 12.02.2015. It is also her case that these orders have been echoed in the subsequent judgments of the Hon'ble High Court of Punjab & Haryana in Union of India vs. Darshan Lal Bali and the Hon'ble High Court of Dehi in Ram Phal vs. Union of India. In Ram Phal's judgment, the Hon'ble High Court of Delhi has categorically quashed the OM to the extent that it states that the benefit of upgradation of posts subsequent to retirement would not be admissible to the pre-2006 pensioners.

16. On the other hand, the respondents submit that the minimum family pension has to be fixed against Sl.No.13 of the OM dated 28.01.2013 corresponding to the pre-revised scale from which the pensioner had retired. The emphasis of the respondents is on the scale corresponding to the pre-revised scale from which the pensioner had retired and not on any upgraded scale. It is also the stand of the respondents that the Grade Pay of Rs.4200/- in respect of the posts which were in the pre-revised pay scale of Rs.6500-10,500/- was upgraded subsequently to Rs.4600/-. However, this was outside the recommendations of the VI CPC in terms of the Ministry of Finance OM dated 13.09.2009. Since this upgradation is a post VI Pay Commission decision of

the Government, the same is applicable in the structure obtaining in the revised pay scales with effect from 01.01.2006. Thus, this upgradation is not applicable to those who are holding these posts prior to 01.01.2006 and had retired before 01.01.2006. Since the applicant's late husband had retired on 30.11.1980, he is not entitled to Grade Pay of Rs.4600/- and her family pension consequently cannot be revised on this basis. With regard to the applicant's contention that the Full Bench had quashed the OM dated 11.02.2009, the respondents have cited the orders of the Principal Bench of this Tribunal in OA.No.2553/2014 in which it has been stated as follows:

“Though the Full Bench of the Tribunal quashed the OM dated 11.2.2009, ibid, the decision of the Full Bench was qua the applicants before it, and was not with regard to quashing of the decision of the Government regarding the admissibility of the benefit of upgradation of posts, subsequent to their retirement, to the pre-2006 pensioners. In the concluding paragraph 30 of the order, the Full Bench did not direct the respondents to grant the benefit of upgradation of posts (subsequent to their retirement) to the pre-2006 pensioners, while revising their pension with effect from 1.1.2006.”

17. We have perused the Ram Phal's judgment relied upon by the applicant. The relevant extracts are reproduced hereunder:

“1. The petitioner challenges the applicability of paragraph 5 of the Office Memorandum dated February 11, 2009 notified by the Department of Pension and Pensioners Welfare, concerning revision of pension of pre-2006 pensioners, wherein it has been stated that Therefore, the benefit of upgradation of post subsequent to their retirement would not be admissible of the pre-2006 pensioners in this regard. The petitioner also seeks quashing of the order dated February 10, 2016 whereby his representation for revised pension has been rejected. Petitioner also prays for Mandamus directing the respondents to revise his pension to Rs.9375/- per month as given in the fitment table as given in 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 January 28, 2013.

.....

.....

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.

26. We would also note that the present petition would also need to be allowed in the teeth of the recent Office Memorandum dated April 06, 2016 wherein it has been unambiguously stated that it has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement.? On the same reasoning, the petitioner cannot be denied the benefit of revised pension when the respondents themselves have adopted the aforementioned position.

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 Rs.9375/- per month as given in the fitment table appended to the Government of India, Ministry of Personnel, Public

***Grievances 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.”***

18. A reading of this judgment leave no manner of doubt that the OM dated 11.02.2009 has been quashed to the extent that it denies the benefit of upgradation of posts subsequent to the retirement of pre-2006 pensioners.

19. In this view of the matter, there is considerable force in the contention of the applicant that the respondents have erred in rejecting her representation for refixation of her family pension on the basis of the revised Grade Pay of Rs.4600/-.

20. The respondents, however, have been strongly contending that the benefit of Grade Pay of Rs.4600/- is outside the VI CPC recommendations and that the applicant is not entitled for the same. To buttress this contention, they have placed heavy reliance on the judgment of the Hon'ble High Court at Hyderabad in W.P.Nos.9770, 9779 and 9844/2017, dated 05.12.2017.

21. We have carefully considered the aforesaid judgment. The Hon'ble High Court at Hyderabad while allowing the Writ Petition filed by the Commissioner of Customs & Central Excise held that the Tribunal had wrongly interpreted the judgment of the Full Bench of the Central Administrative Tribunal in OA.No.655/2010 and observed that “all that the Tribunal did was to direct the Union of India to refix the pension of

pre-2006 retirees post upon the resolution dated 29.8.2008. The Hon'ble High Court had also extracted Para 30 of the order of the Full Bench, which reads as follows:

“30. In view of what has been stated above, we are of the view that the clarificatory OM dated 03.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 03.10.2008) 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 01.01.2006, based on the resolution dated 29.8.2008 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.”

The Hon'ble High Court had also further held that there are distinctions between the applicants before the Full Bench of the Tribunal and the applicants in OA Nos.1172, 1173 and 1174/20015 inasmuch as the applicants before the Full Bench belong to Grade S-29 and had pointed out disparities between S.24 Grade employees and S.Grade 29 grade employees, and that in the instant case, the applicants, who belong to the erstwhile S-12 grade employees, had not made any comparison of themselves with other grade employees. The second distinction drawn is that the judgment of the Full Bench of the Tribunal does not show whether the claim that arose before the Full Bench was on account of any intermediary revision that took place in between the two Central Pay Commissions namely from 01.01.1996 to 01.01.2006. It has been further observed that in the case of the applicants in OA.Nos.1172/2015, 1173/2015 and 1174/2015 (respondents in the WP), the persons who are in service in the erstwhile grade got the intermediary revision on 21.4.2004 on account of which a disparity arose between those who retired before 21.4.2004 and those who retire between 21.4.2004 and 1.1.2006. On account of these dissimilarities, it is not possible to apply the ratio laid down by the Full Bench in O.A.No.655/2010. The Hon'ble High Court has

also emphasized the fact that item no.12 of the table in the Annexure to the Government of India's resolution dated 29.8.2008 has clearly held that "*fixation of pension will be corresponding to the pre-revised pay scale from which the pensioner had retired*", and that the emphasis is on the pre-revised scale from which the pensioner had retired. Since the applicants in the aforesaid OAs were basing their claim on Serial No.12 in the table given in the Annexures to the Govt. Of India Resolution dated 29.8.2008, they must show the pre-revised pay scale from the date they had retired.

22. It is also observed that in the aforesaid judgment, the Hon'ble High Court at Hyderabad, had discussed the Ram Phal judgment of the Hon'ble Delhi High Court dated 03.08.2006 and had concluded that the decision of the Delhi High Court was not concerned with any intermediary revision that took place in between the two Central Pay Commissions. For the aforesaid reasons, Writ Petition was allowed and the orders of this Tribunal in OA.Nos.1172/2015, 1173/2015 and 1174/2015 were set aside.

23. Admittedly, in the instant case, the applicant is claiming the benefit of the revised Grade Pay of Rs.4600/- which was granted by the Ministry of Finance, Department of Expenditure, after the acceptance of the VI CPC recommendations and the notification of the CCS (Revised Pay) Rules 2008. In pursuance of OM dated 13th November 2009, the persons who were in the pre-revised scale of Rs.6500-10,500/- as on 01.01.2006 were granted Grade Pay of Rs.4600/- which corresponds to the higher pre-revised scale of Rs.7450-11500. This revision, which is a post VI CPC decision fall in the category of an intermediary revision, which has been discussed in the judgment of the Hon'ble High Court at Hyderabad, and the applicant herein is seeking the benefit of this intermediary revision.

24. Having regard to the fact that we are bound by the aforesaid Orders of the Hon'ble High Court at Hyderabad in W.P.Nos.9770, 9779 and 9844/2017, this OA is liable to be dismissed. Ordered accordingly. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 20th day of February, 2018

Dsn.

