

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

OA/21/520/2016

Date of CAV: 22.01.2018.

Date of Order : 27.02.2018

Between :

L.L. Sudhakar Reddy,
S/o. Late Veera Reddy,
aged 83 years,
Retd. Section Officer/ Junior Accounts Officer,
Archeological Survey of India,
H.No.6-3-1176, B.S. Maktha,
Begumpet,
Hyderabad – 500 016.

... Applicant

And

The Union of India, rep., by

1. The Pay & Accounts Officer,
Archeological Survey of India,
Room No.802, 8th Floor,
Central Government Offices Towers,
Kavadiguda,
Hyderabad – 500 080.
2. Senior Accounts Officer,
Principal Accounts Officer,
Ministry of Human Resources Dept. (HRD),
New Delhi – 110 001.
3. The Secretary to Govt. of India,
Ministry of Per. P.G. and 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 ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

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

ORDER

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

The brief facts of the case are that the applicant while working as Junior Accounts Officer took voluntary retirement from the respondent-department on 11.12.1979 after rendering more than 21 years of service under the Govt. of India. Thereupon, his pension was fixed on pro-rata basis at 50/66 at 50% of the average emoluments drawn for 10 months before his voluntary retirement. His pension has been fixed at Rs.5,583/- with effect from 01.01.2006. According to the applicant, the scale of pay of the post of Section Officer/Junior Accounts Officer was replaced/upgraded to Rs.7450-11500/- during the 5th CPC and the post was redesignated as Asst.Accounts Officer during the VI CPC. From 1.1.2006 the post of Section Officer and Junior Accounts Officer ceased to exist and were merged with that of Assistant Accounts/Assistant Audit Officer in the IA&AD and all organized Accounts cadres with the scale of the post being identified in Pay Band-2 of Rs.9300-34800/- with Grade Pay of Rs.4800/-. The applicant's contention is that he is eligible for minimum pension of Rs.9,330/- as the minimum of the pay of the post of Assistant Accounts Officer is Rs.18,660/-.

2. The applicant submits that as per Para 4.12 of the Annexure to 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 Hon'ble Supreme Court in its orders dated 12.02.2015 held as follows:

“In short, the provisions of the quashed OM s 03.10.2008, 14.10.2008, 11.02.2009, (clarifying for reduction in modified parity based minimum revised pension, reduction in full minimum rev. Pension

based on length of QS, denial of GP applicable for upgraded pre-revised scale 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 of the highest Court of Land.”

3. The applicant has cited the case of one Sri C.B.Patil, IPS who retired as Additional Inspector General of Police. Due to merger of certain scales in the IV CPC, the post of Additional Inspector General of Police ceased to exist. While revising/re-fixing the pension of the late Sri C.B.Patil, a consolidation method was adopted and his pay was fixed at 50% of the minimum of the pay of Rs.16,400-20,000/-, which was applicable to the post of Deputy Inspector General of Police. Taking into account the guiding principle of the V CPC, this Tribunal in O.A.No.266/2002 ruled that the late Sri C.B.Patil was entitled for pension at 50% of the pay which was applicable to the I.G.of Police, w.e.f. 1.1.1996 adopting the principle of vertical relativity with effect from 01.01.1996. According to the applicant, these orders have become final and have been implemented. He, therefore, submits that this principle may be applied to the present applicants also in view of the fact that the post of Chief Clerk/ Dy.Accountant/ Assistant/ Office Superintendent-II/Office Superintendent-I with the same entry qualifications, duties and responsibilities are merged and placed in the scale of pay of Rs.5500-9000/- in the V CPC.

4. The respondents have filed a reply statement stating that the applicant's pension has been revised as per the OM dated 06.04.2016 to Rs.7,215/- from 01.01.2006 vide authority No.PAO/ASI/HYD/E-Revision/16-17/16,1,18 dated 16.05.2016. They have refuted the contention of the applicant that the post of JAO ceased to exist from 01.01.1996 and pointed out that there were different pay scales of Rs.5500-9000/- and Rs.6500-10500/- for the post of JAO and Assistant Accounts Officer respectively. Hence, the application of

commensurate revised pay scale does not arise. It is also submitted that the pay scale of Junior Accounts Officer and the Assistant Accounts Officer were upgraded from Rs.5500-9000/- and Rs.6500-10500/- to Rs.6500-10500 and 7450-11500/- respectively allowing notional fixation from 01.01.1996 and monetary benefits from 19.2.2003. The benefit of this upgraded scale with effect from 01.01.1996 has been extended to the pensioners who retired during the period from 01.01.1996 to 18.02.2003, vide OM dated 05.11.2008. Moreover, the post of Assistant Accounts Officer was not in existence during the service period of the applicant. The posts of Junior Accounts Officer and Assistant Accounts Officer were merged as Assistant Accounts Officer only on 1.1.2006 after suitably amending the Recruitment Rules by allowing Pay Band of Rs.9300-34800/- with Grade Pay Rs.4800/- from 01.01.2006.

5. The applicant has filed a rejoinder statement pointing out that the respondents had admitted that the posts of Junior Accounts Officer and Assistant Accounts Officer were merged as Assistant Accounts Officer after suitably amending the Recruitment Rules by allowing Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4800/- from 01.01.2006. In view of this admission, the applicant is entitled to the minimum pension of Rs.9,330/-.

6. The applicant also filed written submissions pointing out that reliance on OM dated 11.02.2009 which states that the benefit of upgradation of post subsequent to retirement would not be admissible to the pre-01.01.2006 pensioners, is no longer valid or tenable, in view of the orders of the Hon'ble Supreme Court quashing the said OM in its orders dated 12.02.2015 and also orders of the Punjab & Haryana High Court in AGIA RAM's case and UNION OF INDIA vs. DARSHAN LAL BALI and the order of the Hon'ble High Court of Delhi in RAM PHAL vs. Union of India.

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

8. The main contention of the applicant is that in the V CPC, the post of JAO was upgraded from Rs.7450/- to Rs.11500/- and the post was designated as Assistant Accounts Officer and that the post of JAO ceased to exist. Consequently, he is entitled to the upgraded/ replaced scale of pay applicable to the post of AAO in Pay Band-2 Rs.9300-34800/- with Grade Pay Rs.4600/-. After the reply statement was filed in which the Respondents had admitted that the post of JAO & AAO were merged as Assistant Accounts Officer in Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4800/-, the applicant amended the OA and prayed for grant of Pay in Pay Band-2 Rs.9300-34800/- with Grade Pay Rs.4800/- w.e.f. 1.1.2006.

9. The applicant has also drawn our attention to Para 1 (C) of the GOI resolution dated 29th August 2008 which reads as follows:

“1 c) In the IA & AD and all organized accounts cadres, posts of Section Officers and Assistant Audit/ Accounts Officers will be merged and placed in PB-2 with grade pay of Rs.4800 as recommended by the Commission. In modification of Sixth CPC's recommendations, Audit/ Accounts Officers (AOs) will be placed in PB-2 with grade pay of Rs.5400 and Senior AOs will be placed in PB-3 with grade pay of Rs.5400.”

10. Thus, in terms of this order, the applicant would be entitled to fixation of his Pension on the basis of Grade Pay of Rs.4800/- particularly in view of the fact that the O.M. dated 11.2.2009 which denies the benefit of upgraded scale to pre-2006 pensioners has been quashed by the Hon'ble Delhi Court in Ram Phal vs UOI holding as follows:

“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.”

11. Admittedly the Respondents have also conceded that the posts of JAO & AAO have been merged as AAO in PB-2 Rs.9300-34800/- with Grade Pay of Rs.4800/- w.e.f. 1.1.2006. The Respondents have however brought to our notice the judgement of the Hon'ble High Court at Hyderabad in W.P. No.9770, 9779 & 9844/2017 wherein the orders of this Tribunal in O.A. No.1172/2105 and batch were set aside. In the aforesaid OAs, this Tribunal had held that the Respondents were not justified in maintaining distinction between pre and post 1.1.2006 pensioners in the computation of pension. The Tribunal further held that the ground taken for denial of upgraded scale of pay w.e.f. 1.11.2004 is not valid in view of the orders of the Full Bench of the Central Administrative Tribunal in OA No.655/2010 dated 1.11.2011. When the orders of the Tribunal were challenged in the Hon'ble High Court, the Hon'ble High Court at Hyderabad in W.P. No.9770, 9779 & 9844/2017 had held that the Tribunal was wrong in following the decision of the Full Bench of the C.A.T. in O.A. No.655/2010.

12. The Hon'ble High Court had also observed as follows:

“27. But unfortunately for the respondents herein, there are at least two glaring distinctions between the applicants before the Full Bench of the Tribunal and the respondents herein. They are:

(i)

ii. The second distinction is that the judgement 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. In the case of the respondents herein, persons who were in service in S.12 grade got an intermediary revision on 21.4.2004 on account of which a disparity arose between those who retired before 21.4.2004 and those who retired between 21.4.2004 and 01.01.2006.

28. On account of the aforesaid two obvious dissimilarities, it is not possible to apply the ratio laid down by the Full Bench of the Tribunal in OA No.655/2010 to the case of the respondents herein. As a consequence, the decisions of the other High Courts such as Kerala, Punjab and Haryana, and Delhi, which followed the decision of the Full Bench of the Tribunal after is confirmation up to the Supreme Court, cannot also have any application to the case of the respondents herein. Even the decision of the Delhi High Court in W.P (C) No.3035 of 2016 dated 3.8.2016, was not concerned with any intermediary revision that took place between the two Central Pay Commissions.”

13. The main reason as to why the Hon'ble High Court had set aside the orders of this Tribunal in O.A. No.1172/2015 and batch was that the Tribunal had allowed the O.A. and directed re-fixation of pension taking into account the revised pay scale as notified in O.M. Dated 21.4.2004. The Hon'ble High Court held that the revision on 21.4.2004 was an intermediary revision that took place between two Central Pay Commissions from 1.1.1996 to 1.1.2006 and that it was wrong to apply the Full Bench judgement in O.A. No.655/2010 as the Full Bench had not considered any claim on account of any intermediary revision that took place between the two Central Pay Commissions from 1.1.1996 to 2006.

14. The instant case is distinguishable on facts. The claim of the applicant herein does not rest on any intermediary revision between two Central Pay Commissions. The Govt. of India resolution dated 29.8.2008 while accepting the recommendations of the VI CPC has ordered the merger of the posts of S.Os and AAO and their placement in PB-2 with Grade Pay of Rs.4800/-. Thus, the merger is consequent on the 6th CPC recommendations. The Respondents have also conceded that the post of JAO/ AAO have been merged and placed in PB-2 Rs.9300-34800 with Grade Pay of Rs.4800/- from 1.1.2006.

15. The Respondents would contend that the applicant is not entitled to the benefit of pay fixation as the post of AAO was not in existence during his service. In other words, the upgradation of the post of JAO has taken place after his retirement and he is not entitled to the benefit of any financial upgradation which has taken place after his retirement. The above contention is not tenable when the post against which the pensioner retired is no more in existence and has been merged with the post of AAO. This contention also ceases to be valid when the O.M. dated 11.2.2009 which had denied the benefit of any upgradation subsequent to the retirement of pre-2006 pensioners, has been quashed. Thus, there is no justification for denying the re-fixation of the applicant's pension on the basis of the merged Pay in PB-2 Rs.9300-34800/- with Grade Pay of Rs.4800/-.

16. Accordingly, this O.A. is allowed. There shall be a direction to the Respondents to re-fix the Applicant's pension on the basis of the minimum Pay in PB-2 Rs.9300-34800/- with Grade Pay of Rs.4800/- and pay the consequential arrears within a period of three months from the date of receipt of a copy of this order. No costs.

(MINNIE MATHEW)	(JUSTICE R.KANTHA RAO)
ADMN. MEMBER	JUDL. MEMBER

pv/dsn