

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

OA/21/519/2016

Date of CAV: 22.01.2018.

Date of Order :22.02.2018

Between :

R. Hanumantha Rao,
S/o. Late Satyanarayana,
aged 77 years,
Retd. Office Superintendent Gr.II,
EME (Records), H.No.12-10-587/501/17 H,
GHMC No.1546, Road No.2, Indira Nagar Colony,
Warisguda, Secunderabad – 500 061.

... Applicant

And

The Union of India, rep., by

1. Director General,
Electrical & Mechanical Engineers,
Ministry of Defence,
Army Hqrs., DHQ Post,
New Delhi – 110 105.
2. Officer-in-Charge,
EME Records Office,
Ministry of Defence,
Trimulgherry,
Secunderabad – 500 061.
3. The Secretary to Govt. of India,
Ministry of Per.PG and Pensions,
Dept. Of Pensions & Pensioner's Welfare,
Lok Nayak Bhavan, Khan Market,
New Delhi – 110 003.

... Respondents

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

Counsel for the Respondents ... Mrs. L. Pranathi Reddy, Addl. 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 retired on 31.12.1996 as Office Superintendent Grade-II/Assistant from the office of the Officer-In-charge, EME Records, M/o Defence, Trimulgherry, Secunderabad. He submits that “**to the extent of his knowledge**” the posts of Office Superintendent Gr.II and Gr.I have been merged during the V CPC period and that in any case, the post of Office Superintendent Grade-II ceased to exist with effect from 01.01.2006 and that the post has been designated as Office Superintendent/Assistant in Pay Band-2 Rs.9300-34800/- with Grade Pay Rs.4200/-. According to the applicant, in the VI CPC, the minimum pay with Grade Pay for the post of Office Superintendent is Rs.14,430/- and that minimum pension at 50% of Rs.14,430/-, would work out to Rs.7,215/- per month. However, his pension was fixed at Rs.6,750/- per month with effect from 01.01.2006.

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 Inspector General of Police w.e.f. 1.1.1996 by adopting the principle of vertical relativity. According to the applicant, these orders have become final and have been implemented. He, therefore, submits that this principle may be applied to him also in view of the fact that the post of Chief Clerk/Dy.Accountant/Assistant/Office Superintendent-II/Office Superintendent-I having the same entry qualifications, duties and responsibilities are merged and placed in the scale of pay of Rs.5500-9000/- in the V CPC itself.

4. The respondents have contested the OA by filing a reply statement. They submit that he retired in the post of Office Superintendent Grade-II on 31.1.1996. They have denied the contention of the applicant that the post from which he retired was merged in the pay scale of Rs.5500-9000 in V CPC. They submit that as per the VI CPC, the pension of the applicant was revised with effect from 01.01.2006 at Rs.6750/- per month on the basis of the minimum fitment table in accordance with DOP&PW OM dated 30.07.2015 and 06.04.2016. They point out that the applicant has sought for revising his pension at Rs.7215/- in S-10 Grade claiming that the post of Office Superintendent Grade-I and II were merged during V CPC and on that account

he is entitled to S-10 grade instead of S-9. They state that the applicant's pension has been revised in Pay Band Grade Pay corresponding to the pay in the pre-revised pay scale from which he had retired in accordance with the orders issued by DOP & PW dated 1.9.2008 and 3.10.2008. It is further submitted that from Sl.No.10 of the Concordance Table of the Annexure to O.M. dated 28.1.2013 it is clear that the 5th CPC Scale of Rs.5000-150-8000 is in S 9 and that in the 6th CPC, the corresponding scale is Rs.9300-34800 with G.P. Of Rs.4200/-. Accordingly the applicant's pension is correctly fixed at Rs.6750/- corresponding to pre-revised scale as per Fitment Table as shown in Column No.9 of the Concordance Table. Further, the benefit of revision of pension in the upgraded scale is not admissible to pre-2006 pensioners as clarified in OM dated 11.05.2001 and 11.02.2009. It is also submitted by the respondents that any merger of posts in the feeder category will not be applicable to a person who has retired prior to the merger.

5. The applicant has filed a rejoinder citing the orders of the Hon'ble High Court of Punjab & Haryana in AGIA RAM & OTHERS vs. UNION OF INDIA & OTHERS and in UNION OF INDIA VS. DARSHAN LAL BALI & OTHERS, which again reiterated the earlier orders in AJIA RAM's case and also the judgment of the Hon'ble High Court of Delhi in RAM PHAL vs. UNION OF INDIA & OTHERS. Further, the Hon'ble High Court of Delhi in the Ram Phal judgement had quashed and set aside the office memorandum dated 11.02.2009 observing that the applicant is entitled for the benefit of the merged scale for the purpose of computation of his pension.

6. Heard the learned counsel on both sides and perused the records.

7. The learned counsel for the applicant argued that the case on hand is clearly covered by the orders of this Tribunal in OA No.1268/2015 dated 7.12.2017 in which this Tribunal had held that the applicant therein was entitled to the benefit of the merger of the posts of Deputy Office Superintendent Level-I & Level-II in view of the fact that the O.M. Dated 11.2.2009 had been quashed. Per contra, the learned counsel for the Respondents drew our attention to the orders of this Tribunal in OA No.1172/2015 and batch holding that the Respondents therein were not justified in maintaining distinction between the pre and post 1.1.2006 pensioners in the computation of the 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 in OA 655/2010 dated 1.11.2011. However, the Hon'ble High Court at Hyderabad in W.P. No.9770, 9779 & 9844/2017 had set aside the aforesaid orders of this Tribunal. Holding that the Tribunal was wrong in following the decision of the Full Bench of the Central Administrative Tribunal in O.A. No.655/2010. It was the case of the Respondents that this O.A. is also liable to be dismissed on the same lines.

8. The questions that fall for consideration is whether the grades of Office Superintendent Grade II and Grade I have been merged in V CPC and whether the applicant is entitled to the benefit of the merger of the posts of Office Superintendent Gr.II & Gr.I that has reportedly taken place after his retirement.

9. The crux of the case of the applicant is that "**to the extent of his knowledge**", the posts of Office Superintendent Gr.II & Gr.I have been merged during the V CPC period and that the scale of pay of the post of Office Superintendent Gr.II was upgraded from Rs.5000-150-8000/- to Rs.5500-175-9000/- notionally w.e.f. 1.1.1996. Further, the scale of pay of Rs.5500-175-9000/- in the V CPC is identified with Pay Band-2 Rs.9300-34800/- with Grade Pay Rs.4200/-. Thus, the minimum pay of the post is Rs.14430/- and the minimum pension at 50% of the said amount works out to Rs.7215/-. It is his case that though he is entitled to minimum pension of Rs.7215/-, his pension was fixed at only Rs.6750/- p.m.

10. The Respondents on the other hand have refuted the contention of the applicant that the post of Office Superintendent Grade-II from which he retired has been merged in the pay scale of Rs.5500-9000/- in the V CPC. They have drawn our attention to the fact that the corresponding scale of Rs.5000-150-8000/- is placed at S-9 in the revised concordance table annexed to the O.M. of the Department of Pension and Pensioners Welfare dated 28.1.2013. In response to this, the applicant has pleaded in his rejoinder statement that the Respondents have "indirectly admitted that the scale of pay of the post of Office Superintendent w.e.f. 1.1.2006 is in Pay Band-2 Rs.9300-34800/- with Grade Pay Rs.4200/- in S-10 grade with minimum pay of Rs.14430/-".

11. A perusal of the revised concordance table shows that the pre-revised scale of Rs.5000-150-8000/- has been placed in S-9 grade with a corresponding scale of Rs.9300-34800/- with Grade Pay of Rs.4200/- . The minimum Pay in this Pay Band & Grade Pay is Rs.13500/- and the minimum pension is Rs.6750/- . It is also seen that the pre-revised scale of Rs.5500-175-9000/- has been placed in S-10 grade in PB-2 Rs.9300-34800/- with Grade Pay of Rs.4200/- and minimum pay of Rs.14430/- and minimum pension of Rs.7215/- . Thus, the VI CPC has placed the pre-revised scale of Rs.5000-150-8000/- in S 9 and the pre-revised scale of Rs.5500-175-9000/- in S 10. Thus, in the VI CPC S 9 and S 10 are two distinct scales corresponding to the pre-revised scale of Rs.5000-150-8000/- and Rs.5500-175-9000/- respectively.

12. The applicant has failed to produce any material to show that OS Gr.II and Gr.I have been merged during the V CPC period so as to enable him to get the S-10 grade which would entitle him to a minimum pension of Rs.7215/- . From his pleadings which have been extracted in para 9 supra it is evident that the claim is based only on surmises and bereft of relevant supporting evidence. In the absence of any material evidence in this regard, we are unable to accept the contention of the applicant that the Office Superintendent Gr.II & Gr.I have been merged in the V CPC and that he is entitled to the consequential benefit of the merged scale of Rs.5500-9000/-.

13. In his written submissions, the learned counsel for the applicant has adverted to an order of the Ministry of Finance dated 28.2.2003 in which the posts of Senior Auditor/ Senior Accountant have been upgraded on notional basis from the existing pay scale of Rs.5000-8000 to Rs.5500-9000 w.e.f. 1.1.1996 and on actual basis from 19.2.2003 and has submitted that these “orders are universal in application”. However, we note that the orders cited by him relate specifically to the cadre of Senior Auditor/ Senior Accountant and their equivalent posts in the organised Accounts Cadres and does not have any applicability to the cadre of Office Superintendent. We, therefore, hold that this contention is untenable.

14. The applicant has heavily relied on the orders of this Tribunal in OA No.1268/2015 dated 12.2.2017. However, a perusal of the same would show that the aforesaid judgement is distinguishable on facts. In O.A. No.1268/2015, the Respondents themselves have admitted in their reply statement that prior to 20.9.2005, there were two levels in the cadre of Deputy Office Superintendent i.e. DOS Level-II with pay scale of Rs.5000-150-8000/- and DOS Level-I with pay scale of Rs.5500-175-9000/. They also admit that these two cadres were merged as Deputy Office Superintendent (DOS) in the scale of Rs.5500-175-9000/- w.e.f. 20.9.2005. The main contention of the Respondents in the aforesaid O.A. is that the applicant is entitled only to the revised pay in the Pay Band and Pay corresponding to the pre-revised pay scale from which he retired and that in O.M. dated 11.2.2009 it was made clear that the benefit of upgradation of a post subsequent to retirement would not be admissible to the pre-2006 pensioners. After having taken into account the fact that the posts of DOS Level-II & Level-I have been admittedly merged and also taking into account the fact that the Hon'ble High Court at Delhi in Ram Phal vs UOI had categorically quashed the O.M. Dated 11.2.2009 to the extent that it denied the benefit of upgradation of a post subsequent to the retirement of pre-2006 pensioners, we had allowed the O.A. In the instant case, however, the Respondents have denied that the

post of Office Superintendent Gr.II & Gr.I were merged in the V CPC so as to enable the applicant to get the benefit of S-10 grade and a pension of Rs.7215/- . Therefore, the judgement in O.A. No.1268/2015 is of no help to the applicant.

15. In the material that has been placed before us, there is nothing on record to show that OS Gr.II and OS Gr.I were merged during the V CPC. As already stated the applicant has also failed to produce any material evidence in support of his contention that OS Gr.II and OS Gr.I have been merged in the V CPC. In the absence of any supporting evidence, we find no merit in the applicant's contention that he should be given the benefit of an upgraded scale on account of merger of the posts of OS Grade-II and OS Grade-I.

16. In the light of the foregoing discussions, the O.A. fails and is accordingly dismissed. No costs.

(MINNIE MATHEW) (JUSTICE R.KANTHA RAO)

ADMN. MEMBER JUDL. MEMBER

pv