

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

O.A. No.021/01268/2015

&

M.A.No.755/2016 in O.A.No.021/01268/2015

Date of CAV:17.11.2017. Date of Order : 07.12.2017.

Between :

Mohammad Yakoob, s/o late Mohammad Haneef,
Retd. Deputy Office Superintendent, Central Excise,
aged 83 yrs, r/o H.No.13-5-31, Tappachabutra,
Kulsumpura post, Hyderabad-500 006.

... Applicant

AND

The Union of India, rep., by :

1. The Commissioner of Customs,
Central Excise & Service Tax,
Basheerbagh, Hyderabad-500 004.

2. The Chairman, Central Board of Customs,
Excise and Service Tax, 5th floor,
Hudco Visala Building, Bhikaji Cama Place,
New Delhi-110 066

3. The Secretary to Govt. Of India,
M/o Per., PG and Pensions,
Dept. Of Pensions & Pensioners Welfare,
Loknaya Bhavan, Khan Market,
New Delhi-110 003.

... Respondents

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

Counsel for the Respondents ... Mr.M.Brahma Reddy, 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.) }

This OA assails the Pension Payment Order dated 05.09.2009 in which the applicant's pension has been fixed at Rs.6,750/- and also the orders of the first respondent dated 05.08.2015 rejecting his representation for refixation of his pension.

2. The brief factual matrix of the case is that the applicant retired on 31.12.1991 as Deputy Office Superintendent. He contends that the scale of pay of Deputy Office Superintendent, Central Excise, Level-I and II were merged by the Government of India on 20.09.2005 during the V CPC period and that the said post was placed in the V CPC scale of pay of Rs.5500-9000/-. The said post is identified with Pay Band-2 Rs.9,300-34,800/- with Grade Pay of Rs.4,200 in the VI CPC. Thus, the pay of the post with effect from 01.01.2006 is Rs.14,430/-. The recommendation of the VI CPC is 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 + Grade Pay corresponding to the pre-revised pay scale from which the pensioner had retired"*. Having regard to this, the minimum pay in the Pay Band of Rs.9,300-34,800/- with Grade Pay of Rs.4,200/- is Rs.14,430/-. Hence, he is eligible for a minimum pension of Rs.7,215/- at 50% of Rs.14,430/-. However, he has only been authorized a pension of Rs.6,750/- with effect from 01.01.2006.

3. The applicant has cited the judgment of the Coordinate Bench of this Tribunal at Ernakulam in OA.Nos.715/2012 and 1051/2012 in support of his claim. It is his case that he is similarly and identically situated to *M.O.Inasu, Deputy Office Superintendent (Retd.)*, Central Excise in O.A.No.715/2012 and *K.Ramachandran*

Unnithan, Deputy Office Superintendent (Retd.), Central Excise in OA.No.1051/2012.

The said OAs were allowed by holding as follows:

“7. In the light of the above, the settled law is that in no case the pension of a pre-2006 pensioner shall be lower than fifty percent of the minimum of the Pay Band plus Grade Pay thereon corresponding to the pre-revised scale from which the pensioner had retired. It means that pension of a pre-2006 retiree has to be first calculated taking into account the revised pay in the pay in the Pay Band plus Grade Pay corresponding to the length of his service and then find what is 50% of the minimum Pay Band plus Grade Pay and fix higher of the two as his pension. Hence, the applicants are eligible to get the minimum pension in the Pay Band plus Grade Pay of the Deputy Office Superintendent, the post from which they had retired, with effect from 01.01.2006. Accordingly, the OAs are allowed as under:

8. The respondents are directed to issue revised Pension Payment order (PPO) to the applicants specifying the pension on the basis of para 4.2 of the OM dated 01.09.2008, i.e., 50% of the minimum of the pay in the Pay Band plus Grade pay of the Deputy Office Superintendent and also corresponding family pension and grant all consequential benefits including the arrears of pension within a period of 02 months from the date of receipt of a copy of this order. No costs.”

He also avers that the respondents had challenged the orders in M.O.Inasu's case before the Hon'ble High Court of Kerala at Ernakulam. The Hon'ble High Court of Kerala, dismissed the appeal by holding as follows:

“The issue raised in these Original Petitions stand covered by the decision of the Principal Bench of the Central Administrative Tribunal in O.A.No.655 of 2010 and connected cases, which has been confirmed by the High Court of Delhi in W.P.(C) No.1535 of 2012 by following a Division Bench decision of the Punjab and

Haryana High Court. The learned counsel for the Respondents points out that the Special Leave Petition filed against the aforementioned judgement of the Punjab & Haryana High Court has been dismissed by the Hon'ble Supreme Court. We are also shown a copy of the order of the Hon'ble Supreme Court dated 29.07.2013 dismissing SLP (C) No.13280 of 2013 and SLP (C) No.23055 of 2013 filed against the decision of the Punjab & Haryana High Court. We have gone through the contents of those decisions and we do not find any way to disagree with them. These original petitions, therefore, fail. They are accordingly dismissed in limini."

Further, the Special Leave Petitions and the Review Petitions filed by the Union of India have been dismissed. Hence, the denial of pension at Rs.7215/-, which is 50% of the minimum of Rs.14,430/- is arbitrary, illegal and discriminatory.

4. The respondents have filed a reply statement stating that prior to 20.09.2005 there were two levels in the cadre of Deputy Office Superintendent (DOS) 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/-. These two cadres were merged into a single cadre as DOS in the pay scale of Rs.5500-175-9000/- with effect from 20.9.2005. In 2008, all the three pre-revised scales i.e., Rs.5000-150-8000/-, Rs.5500-175-9000/- and Rs.6500-200-10,500/- were merged into one Pay Band of Rs.9300-34,800/- with Grade Pay of Rs.4200/-. The respondents point out that the applicant retired in the pay scale of Rs.1400-40-1600-50-2300-60-2660/-. The corresponding pay scale of the post with effect from 01.01.1996 is Rs.5000-150-8000/- and with effect from 01.01.2006 the corresponding Pay Band is Rs.9300-34,800/- with Grade Pay of Rs.4200/-. Therefore, as shown at Serial No.10 of the revised concordance table circulated by the Ministry of

Personnel, PG & Pensions, Department of Pension & Pensioner's Welfare, letter dated 28.01.2013, the sum of minimum pay in the pay band and grade pay in the case of the applicant is Rs.13,500/-. Accordingly, his pension works out to Rs.6,750/-, which is 50% of the sum of minimum pay in the Pay Band and Grade Pay. Hence, the revision of pension of the applicant has been correctly done in accordance with the instructions in force. Since the pension of the applicant has been revised on the aforesaid lines i.e., @ 50% of sum of minimum pay in the Pay Band and Grade Pay corresponding to the pre-revised scale from which he retired, the case laws quoted by him do not apply. They also submit that the *M.O.Inasu's* case relied upon by the applicant is not relevant in his case as that matter relates to grant of full minimum pension instead of pro-rata pension to those pre-2006 pensioners who have retired with less than 33 years of qualifying service.

5. The respondents also point out that the applicant is entitled only to the revised pay in the Pay Band and Grade Pay corresponding to the pre-revised pay scale from which he retired. In OM dated 11.02.2009, the Department of Pension & Pensioners' Welfare, made it clear that the benefit of upgradation of post subsequent to retirement would not be admissible to the pre-2006 pensioners. Similar instructions for revision of pension of pre-2006 pensioners after the V CPC were upheld by the Hon'ble High Court in *K.S.Krishnaswamy's* case. In the DoP&PW OM dated 11.05.2001, it was clarified that the benefit of revision of pension was to be given with reference to the corresponding pay scale and not upgraded pay scale. The said OM dated 11.05.2001 was upheld by the Hon'ble Supreme Court in C.A.No.3174/2006 (*K.S.Krishnaswamy v. UOI*).

6. The respondents have also relied on the orders passed by the Ahmedabad Bench of this Tribunal in O.A.No.183/2013, dated 30.10.2013, in which it has been held as follows:

“It is a well settled in the pension matters that a pension of a Government employee is determined on the basis of the qualifying service and also on the last pay drawn by him. Sometimes it will be the average of the pay drawn during a certain period prior to his date of retirement/superannuation. “Last pay drawn” is very crucial for determining the Pension. Therefore, it is difficult to understand as to how the applicant can claim for a higher rate of pension on the basis of the salary in a scale of pay which he had never drawn or enjoyed. At the time of his retirement on 12.7.1992 his scale of pay was Rs.7300-7600/-. Annexure-6 order upgrading the pay scales of the Members of the ITAT came into the effect only from 01.1.1996. By that time, obviously, the applicant had retired from service. No retrospective effect has been given to the Presidential decision in Annexure-6 so that the benefit of such upgradation of pay scale could be made applicable to the applicant, who retired about three years prior to 01.01.1996.”

They submit that the said order was also upheld by the Hon'ble High Court of Gujarat on 13.07.2015. Hence all the contentions raised by the applicant claiming revision of pension to Rs.7215 are devoid of any merit.

7. The applicant has filed a rejoinder reiterating that he was on a better footing than Sri M.O.Inasu as he was a full pensioner with more than 33 years of service when he retired. Further, the judgment of the Hon'ble High Court of Gujarat dated 13.07.2015 is not relevant in the face of the Hon'ble Supreme Court orders dated 12.2.2015 in *Union of India v. K.Venugopalan Nair Retd. Scientist*.

8. The respondents have also filed an additional reply statement again reiterating the averments in their first reply statement. They have also cited the orders of the Principal Bench of this Tribunal at New Delhi in O.A.No.2553/2014, dated 15.2.2016 in which the Tribunal had made it clear 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 1.1.2006. They have again stated that since the applicant retired in Rs.1400-40-1600-50-2300-60-2600/-, he is entitled to Rs..5000-150-8000/-, which is the corresponding scale in V CPC. They have again relied on the OM dated 11.2.2009 that the benefit of upgradation of post subsequent to retirement would not be admissible to the pre-2006 pensioners.

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

10. The learned counsel for the Applicant heavily relied on the judgment of the Hon'ble High Court of Punjab & Haryana in *Agia Ram & Others v. Union of India & Others* in CWP No.9581-CAT of 2011 dated 24.08.2011 and the judgment of the Hon'ble Delhi High Court in *Ram Phal v. Union of India & Others* (2017 (2) SLR 82 (Delhi)), in which the OM of the Department of Pensions and Pensioners' Welfare dated 11.02.2009 was quashed to the extent that the benefit of upgradation of posts subsequent to retirement would not be admissible to pre-2006 pensioners.

11. Having considered the submissions on both sides and the material on record, it is seen that the respondents have rejected the claim of the applicant for revision of his pension on the ground that he retired in the pay scale of Rs.1400-2300/- in the IV CPC and that as per the concordance table that has been given by the Department of

Pension and Pensioners' Welfare annexed to their OM dated 20.01.2013, he would fall in S-9 Grade for which the minimum pay in the Pay Band and Grade Pay would be Rs.13,500/- as per fitment table. Hence, his minimum pension has been correctly fixed at Rs.6750/-. The other ground that has been cited by them is that even if the merger of the Deputy Office Superintendent Level-I and II had taken place, he will not be entitled to the benefit of that merger in view of the specific provision in OM dated 11.02.2009, which has clearly held that the benefit of upgradation after retirement will not be available to pre-2006 pensioners. They have also cited the judgment of the Full Bench of the Principal Bench of Central Administrative Tribunal in support of their contention.

12. We note that the Judgment of the Principal Bench of Central Administrative Tribunal in O.A.No.2553/2014, dated 15.02.2016 has made it clear that there is no direction to the respondents to grant the benefit of upgradation of posts subsequent to their retirement to the pre-2006 pensioners. However, we find that in the Ram Phal's case, relied upon by the applicant, the Hon'ble High Court of Delhi has categorically quashed the OM dated 11.02.2009 holding as follows:

“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."

13. In view of the fact 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 and the respondents have not produced any material to show that this order has been reversed, we hold that it is not open to the respondents to deny the claim of the applicant by citing the quashed OM dated 11.2.2009.

14. Besides the law has been fairly well settled in D.S.Nakara's case that "pensioners form a class by themselves and that this class is not divisible for purposes of entitlement and payment of pension into those who retire 'before' and those who retire 'after' a certain date arbitrarily fixed for the purpose". It was also been stated that "any such classification will be discriminatory and violative of Article 14 of the Constitution". It is also relevant to note that "if the formula for computation of pension under goes a change, it will go back for those pensioners who had retired earlier and were not entitled to its benefit when they retired".

15. In the result, the OA succeeds. The respondents are directed to refix the pension of the applicant at Rs.7,215/- with effect from 01.01.2006 and release the consequential arrears within a period of two months from the date of receipt of a copy of this order.

16. The OA is allowed as above.

17. As the main OA is allowed as above, M.A.No.755/2016 stands dismissed.

18. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

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

Dated: this the 7th day of December, 2017

