

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/01106/2017

Date of CAV : 12-11-2018
Date of Order : 29-11-2018

Between :

A.Nageswar Rao S/o A.Sattaiah,
Aged 72 years,
Occ : LSG-Postal Assistant (Retired),
R/o H.No.6-8-154, Near Railway Gate,
Hanumannagar, Nalgonda-508 001,
Nalgonda District (T.S)Applicant

AND

1. Union of India, represented by
The Secretary to Government of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Pension & Pnsioner's Welfare,
Lok Ndayak Bhavan, New Delhi – 110 003.
2. The Chief Postmaster General,
T.S Circle, HYDERABAD – 500 001 (TS).
3. The Postmaster General, Hyderabad Region,
HYDERABAD – 500 001 (TS).
4. The Director Accounts, Postal,
A.P Circle, HYDERABAD – 500 001 (TS).
5. The Superintendent of Post Offices,
Nalgonda Division, Nalgonda (TS).Respondents

Counsel for the Applicant: Mr. B. Gurudas

Counsel for the Respondents : Mrs. K. Rajitha, Sr. CGSC
Mrs.Megha Rani Agarwal, Addl.CGSC

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 to call for the records pertaining to the following impugned orders,

- 1) Denial of 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale, as Pension.
- 2) OM No.F.No.38/37/08-P&PW(A), dated 22.07.2011;
- 3) Order no.396/Admn-1/RTI/C.3/9/2016, dated 20.10.2016

And declare the same as illegal, arbitrary and against the rules and principles of natural justice and in violation of the provisions of the Constitution, set-aside and quash the said illegal orders with consequential directions to the respondents to grant 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale as pension as per Order dt 1.9.2008 and revise the same from time to time as per rules and pass such other order or orders as the Tribunal deems fit and proper in the circumstances of the case and in the interest of justice.

2. The brief facts of the case are that the applicant was initially appointed as Postman with effect from 24.06.1964 and subsequently promoted to Postal Assistant cadre with effect from 22.01.1968. The applicant was compulsorily retired with effect from 03.06.1992 as a result of disciplinary proceedings. By that time the applicant has completed more than 27 years of service. On compulsory retirement his pension was fixed at Rs.681/- per month with effect from 01.09.1992 on pro-rata basis and revised it from time to time.

3. It is humbly submitted that as per the recommendations of the VI Central Pay Commission, vide OM No.38/37/08-P&PW(A), dated 01.09.2008, revised pension in no case shall be lower than 50% of the revised pay scales from which the pensioner had retired. Accordingly the applicant represented his case through representations dated 20.10.2015, 03.06.2016 and 13.07.2017 and requested for revision of pension. As there was no response, he has submitted RTI application dt. 04.08.2017 and appeal dated 19.09.2016. In response to the appeal, the 4th respondent informed the applicant that the revision of pension to 50% of the minimum of pay band + grade pay corresponding to the pre-revised scale is not applicable to him vide letter No.396/Admn.1/RTI/C.3 of 9/2016 dated 20.10.2016 as per the OM No.38/37/08/P & PW (A), dated 22.07.2011 which is not correct. The orders contained in OM dated 01.09.2008 are applicable to all pensioners and making discrimination is illegal. All pensioners have to be treated equally and the benefit has to be extended to them, as per Para-2.1 of OM, dated 01.09.2008. In a similar case Hon'ble High Court of Kerala at Ernakulam vide judgment dated 07.01.2016 in OP(CAT) No.2 of 2016 (Z) quashed the OM dated 22.07.2011 and dismissed the Original Writ Petition as there was no merit in the contention of the respondents / applicants. In other words 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale as pension, was allowed. The applicant is also eligible for this benefit and the respondents have to be directed to extend the benefit to him. Hence this Original Application.

4. Respondents have filed reply statement stating that the applicant was initially appointed as Postman and promoted to the cadre of Postal Assistant on 22.01.1969. He got TBOP with effect from 22.01.1985 and compulsorily retired from service on 03.06.1992 as a measure of punishment under CCS (CCA) Rules, 1965.

5. The Respondents further states that, on compulsory retirement, the applicant's pension was fixed at Rs.681/- per month with effect from 01.09.1992 on pro-rata basis and revised from time to time. The plea applicant is that as per the recommendations of the VI Central Pay Commission vide OM No.38/37/08-P&PW (A), dated 01.09.2008, revised pension in no case shall be lower than 50% of the minimum of the pay and the pay band plus grade pay corresponding to the pre-revised pay scales, from which the pensioner had retired. In response to the appeal under RTI Act, the 4th respondent vide letter No.396/Admn-1/RTI/C.3 of 9/2016 dated 20.10.2016 informed the applicant that the revision of pension to 50% of the minimum of pay band plus grade pay corresponding to the pre-revised scale is not applicable to him in accordance with OM No.38/37/08/P&PW (A), dated 22.07.2011.

6. The Respondents further state that the Department of Pension and Pensioner's Welfare vide OM No.38/37/08-P&PW (A), dated 28.01.2013 issued orders stating that the pension of pre-2006 pensioners as revised with effect from 01.01.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 01.09.2008, as amended from time to time would be further

stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC, dated 30.08.2008.

7. The Respondents further state that the contention of the applicant is not correct since revision of pension to 50% of the minimum of pay band plus grade pay corresponding to the pre-revised scale is not applicable to the applicant in accordance with Department of Pension & Pensioner's Welfare OM No.38/37/08/P & PW(A), dated 22.07.2011 as he was compulsorily retired from service as a measure of punishment under CCS (CCA) Rules, 1965.

8. The Respondents further state that the applicant did not produce copy of order in OA No.207/2012 to show that the DoP&PW OM No.38/37/08-P&PW(A), dated 22.07.2011 was set aside by the CAT, Ernakulam Bench. It is further submitted that the Accounts Officer office of the 4th Respondent vide letter No.80/Admn-I/O.A.1106 of 2018 dated 02.08.2018 has intimated that though various courts directed the respondents there into revise the pension at the rate of 50% of minimum pay, no orders have been issued by the Department of Personnel & Training regarding revision of pension of Compulsory retired pensioners based on court decisions and hence rejection of claim of the applicant is in order and that in absence of such orders to that effect by Govt., of India, the order of

various courts are applicable to the petitioners / applicants therein only. With these submissions, the Respondents pray for dismissal of the Original Application.

9. Learned counsel for the applicant, in support of his contentions, relied upon the following decisions :

i) OA No.640/2014 & Batch, dated 31.07.2015 of CAT, Ernakulam Bench in the case of Director Accounts (Postal), Kerala Circle, Thiruvananthapuram-1 & Others ;

ii) D.S.Nakara & Others Vs. UoI, dated 17.12.1982 (1983 SCC (1) 305.

10. The factual aspects are not disputed. In the decision relied on by the learned counsel for the applicant ie decision of the Hon'ble High Court of Kerala, dated 31.07.2015 between Director of Accounts (Postal), Kerala Circle, Thiruvananthapuram-1 & 3 Ors Vs. N.Karthikeyan Pillai, Postal Assistant (Rtd), Vaisakh, Vellithode, Thrikkaipetta, Mepadi, Wayanad District-673 577 in OP (CAT)No.108/2016 (Z), it has been held as under :

“4. The learned counsel appearing on behalf of the respondent submits that the idea and understanding of the petitioners is thoroughly wrong and misconceived. The working in the resolution is categoric, which reads as follows :

“..... The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent 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.”

It is stated that the said position is quite mandatory, and exception; is drawn in no case. As such, whether the respondent was made to compulsorily retire from service, was not at all to be considered for granting the minimum pension at 50%.”

The said judgment was passed by the Hon'ble High Court of Kerala in which the judgment passed by the Ernakulam Bench of CAT in OA No.640/2014, dated 31.07.2015 was challenged. The said decision is fully applicable to the facts and circumstances of the present case. The Respondents cannot take the plea that no such circular, as per the decision passed by the Hon'ble High Court of Kerala or the CAT, Ernakulam Bench, has been passed by the DoPT. It has also been held by the judgment of the Ernakulam Bench of CAT as under :-

“10. Issues raised in these O.As stand covered by the above decisions of the Tribunal, High Court and Supreme Court. We do not find any reason to add to the judgment already delivered in a similar adjudicated matter. Any modification of the Cabinet resolution by a subsequent administrative order is ultra vires. Accordingly, the OAs are allowed. The respondents are directed to issue revised Pension Payment Orders to the applicants in the OAs specifying that pension of pre-2006 retirees will be calculated on the basis of 50% of the minimum of the ay band plus grade pay corresponding to the pre-revised pay scale of the respective post held at the time of retirement, proportionate to the length of his service and fix higher of the two as pension with effect from 1.1.2006 and corresponding family pension and grant all consequential benefits including arrears of pension within a period of 90 days from the date of receipt of a copy of this order. No order as to costs.”

Taking into consideration the said position of law and the binding precedents ie the decision of CAT, Ernakulam Bench, this Tribunal directs the Respondents to sanction similar benefit to the applicant within a period of three months from the date of receipt of a copy of the order.

11. The Respondents shall extend the consequential service and financial benefits to the applicant. The Original Application is accordingly allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 29th November, 2018.

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