

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 140 OF 2017

Dated:- Friday, 3rd day of November, 2017.

Coram: Hon'ble Shri Prasanna K. Pradhan, Member (A)

Shaikh Nabilal Sadullah Saheb,

Age 90 yrs.

Retired Goods Clerk of Commercial Department
in the office of Divisional Railway Manager,
Central Railway at Solapur

R/o House No.170, Begum Peth

Solapur 413 004

...Applicant

(By Advocate Shri D.N. Karande)

Versus

1. Union of India.

Through The General Manager,
Central Railway,
Mumbai-CST-400 001.

2. Chief Personnel Officer,

Central Railway,
Mumbai-CST-400 001.

3. Divisional Railway Manager,

Central Railway,
Solapur - 413 001.

4. Sr. Divisional Railway Manager,

Central Railway,
Solapur - 413 001.

5. Sr. Divisional Finance Manager,

Divisional Railway Manager's Office,
Central Railway,
Solapur-413 001.

...Respondents

(By Advocate Shri V. S. Masurkar)

O R D E R

1. The applicant has filed the present O.A. seeking the following reliefs:

“8(i) This Hon'ble Tribunal may kindly be pleased to call for the Records pertaining to the case which led to passing / issuing of the impugned P.P.O. No.CR/10718/56782 dated 12.12.2013.

(ii) Hon'ble Tribunal may kindly quash and set aside the orders / letters dt.24.2.2015 (A-3), 27.4.2016 (A-4), 19-11-2015 {A-10(a)}.

(iii) This Hon'ble Tribunal may kindly declare that the Applicant is entitled to draw monthly pension as Rs.6750/- w.e.f. 01.01.2006 and refund the wrong recovery of Rs.98,904/- with 12% of interest.

(iv) This Hon'ble Tribunal may kindly be pleased to order the Respondents to fix the pension of the applicant and issue revised PPO as per 7th CPC with arrears of pension, by adding additional pension to the applicant as per his Age group.

(v) Any other relief(s) that this Hon'ble Tribunal deems fit.

(vi) Cost of the OA be ordered on the Respondents.”

2. The facts of the case are as follow:

The applicant, who is nearly 90 years old joined the Railways on 24.07.1957 and retired on 30.09.1985. At the time of his retirement, he was working as Goods Clerk in the scale Rs. 455-700. The said scale was revised to Rs. 1400-2300 during the IVth CPC. The said scale was accordingly revised to Rs. 5000-8000 during the Vth CPC. The applicant referred to the Railway Service(Revised Pay) Rules, 1977

scheduled for revised scale of pay issued vide no. PC-V/97/1/RSRP/1 dated 16.10.1977(RBE 138/1997) as Annex. A-11(a) which shows that under the Commercial Department in the case of Commercial Clerks, the scale of Rs. 1400-2300 was revised to Rs. 5000-8000. Consequent to the implementation of the VIth CPC w.e.f. 01.01.2006, the scale of Rs. 5000-8000 applicable to commercial staff was revised to Rs. 9300-34000 PB-2 plus Grade Pay of Rs. 4200. The applicant referred to the communication dated 07.01.2010(Annex. A-5), which stated that the applicant's Grade Pay has been shown as Rs. 4500-7000 instead of Rs. 5000-8000 and the Sr. DFN(Solapur) was requested to rectify the same and to issue PPO. Accordingly, on 24.02.2010, the office of Sr. DFM issued a revised PPO No. CR/1078/155782 revising applicant's pension to Rs. 6750 based on the scale of PB2 with Grade Pay of Rs. 4200. However, subsequently a revised PPO was issued by Sr. DFM, Solapur on 12.12.2013 again revising his pension from Rs. 6750 to Rs. 6175. Thereafter a communication was sent to the State Bank of India on 03.07.2014(Annex. A-2) saying that the basic pension has been revised to Rs. 6175 w.e.f. 01.01.2006, and hence recovery of Rs. 98904 be done in monthly installments of Rs. 5350 from the pension. The bank

accordingly recovered the amount.

3. The applicant submits that he has submitted several representations for rectifying the error committed in the revised PPO and saying that he was granted pension taking into account the scale of Rs. 5000-8000 following the Vth CPC and accordingly his pension was correctly allowed earlier from 01.01.2006 based on the scale of PB-2 with Grade Pay of Rs. 4200. He further sought information under RTI and he was informed by the communication dated 24.02.2015 (Annex. A-3) that no records are available in the office since the case is more than five years old. For the representations made by him, the authorities did not take any other favorable action. Hence, the present O.A.

4. The applicant submits that following the Vth CPC, went to the Commercial Department who were earlier in the scale of 1400-2300 were allowed the pay scale of Rs. 5000-8000 which corresponds to PB2 with Grade Pay of Rs. 4200 following Vth CPC. Accordingly, the pension of the applicant was Rs. 6750 initially. However, without issuing any show cause notice, his pension was reduced from Rs. 6750 to Rs. 6175 on 12.12.2013 which is irregular and wrongly done. Recovery of amount from his pension by the respondents is also in violation of Rule No.

9 of the Railway Services(Pension) Rules,1993. Therefore he submits that he is entitled to the relief sought in the present O.A.

5. The applicant has also filed the application an condonation of delay saying that he is a senior citizen, 90 years old and could not visit the office frequently for settlement of his grievances. Therefore he approached the Tribunal after some time which is unintentional. Hence, he prays for condonation of the said delay in filing the OA.

6. The respondents have filed reply statement in which they highlighted the issue of delay in filing the OA and cited several judgements to highlight the fact that stated claims should be considered by this Tribunal. The delay should be considered with reference to original cause of action.

7. Referring to the facts of the case, the respondents submit that the pension of the applicant was revised w.e.f 01.01.2006 as per the directions of Railway board's letter no. F(E)/III/2008/PN1/12 dated 18.11.2008 in O.A. 13/37/2008/P&PW(A) dated 14.08.2010 issued by the Department of Pension and Pensioners Welfare. A revised table of pre 2006 and post 2006 pay scale/ pay band was issued by the RBE 181/2008 dated 18.11.2008 by respondent no. 1 to

facilitate payment of revised pension/family pension in Para 8 of Office Memorandum dated 14.10.2008. In Annexure A-1 of the said OM, the pay scale of the applicant ie. 1400-2300 has been shown as 4500-7000 which further correspondent to PB-1 with Grade Pay of Rs. 2800. These scales are applicable to ones drawing pay in existing scale on 01.01.2006. The applicant was a pensioner in 2006 and he was drawing his pension and not his pay in the scale of 5000-8000. Hence, the claim by the applicant for PB-2 with Scale Pay of Rs. 4200 is not applicable in this case. The applicant was not eligible for fixation of pay as on 01.01.2006. The revision of pension shall be in terms of OM dated 14.10.2008.

8. The respondents submit that revised PPO dated 24.02.2010 was incorrect as the scale of Rs. 1400-2300 under IVth CPC was wrongly considered as Rs. 5000-8000 in Vth CPC and further PB-2 with Grade Pay of Rs. 4200 in the VIth CPC. Therefore the pension which was already allowed was incorrect in terms of OM dated 14.10.2008. The fact of incorrect issuance of PPO was noted in receipt of clarification dated 18.03.2010 and the revision of the pension was undertaken. In the said clarification, it was mentioned that corresponding scale of Rs. 1400-2300 under the 4th CPC is Rs. 4500-

7000 under the 5th CPC and not 5000-8000. In actual terms, the applicant was entitled to PB-I with Grade Pay of Rs. 2800 in terms of VIth CPC and hence as a corrective measure, his pension was revised correctly as Rs. 6175 from 01.01.2006. Consequently, there will be an overpaid pension which is sought to be recovered. The respondents have also referred to a judgement of this Tribunal dated 09.06.2016 in O.A. 2111/2013 Shri Pradyot Kumar Adhikari vs UOI & Ors. and a judgement dated 29.07.2016 in WP No. 3500/2006 of the High Court of Punjab and Haryana vs Jagdev Singh in support of their contention.

9. The Applicant has filed a rejoinder in which he has highlighted most of the points already made in the original O.A. and referred to the orders of the Principal Bench of this Tribunal dated 20.02.2015 in O.A. 655/2010 which declared the OM dated 03.10.2008 and 14.10.2008 as arbitrary and quashed the same. He also referred to order of the High Court of Delhi in O.A. 155/2012 in which similar observations were made. The Hon'ble High Court of Delhi also said that OM dated 03.10.2008 and 14.10.2008, purposely issued to clarify para 4.2 of OM dated 01.09.2008 were contrary to the plain meaning of the said para and whereby the criteria

and principal for determination of pension has been completely changed. It is also held by various courts that the pensioners who retired before 2006 have to be revised based on revised pay scales as per VIth CPC ensuring that pension fixed it such that it is not lower than 50 per cent of the pay in the pay band and Grade Pay thereon. He also submits that the order of the Tribunal, referred to by the respondents has no applicability in the present case. Similarly, the order of the Apex Court pertains to issue of recovery with an undertaking and has no applicability in this case.

10. Heard the learned counsel for the parties. The learned counsel for the applicant while reiterating submissions made in the O.A. and the rejoinder stated that the applicant was an employee of the Commercial Department and was in the scale of Rs. 1400-2300. Following 5th CPC, the pay scale was revised to 5000-8000. The corresponding scale following VIth CPC was PB2 with Grade Pay of 4200 and the applicant was paid pension of Rs. 6750 following the 6th CPC recommendation vide PPO dated 24.02.2010. Subsequent revision in the pension in 2013 referring to a communication dated 18.03.2010 of the Railway board is incorrect and does not take into consideration the pay scale granted to

specialized category like commercial staff following the 5th Pay Commission. The RBE 138/1997 clearly stipulated the scale allowed to personnel in Commercial Department. While in the first schedule of RBE 138/1997, the scale of Rs 1400-2300 was shown as revised to 4500-7000, the commercial staff were allowed pay scale of Rs. 5000-8000 just as many other categories like Commercial Inspector Gr. IV, Asst. Station Master etc. who are all given pay scale of Rs. 5000-8000 though they were earlier on the scale of Rs. 1400-2300. This scale of Rs. 5000-8000 under Vth CPC corresponds to PB2 with Grade Pay of Rs. 4200 under VIth CPC. The earlier PPO fixing the pension at Rs. 6750 was correctly done. The subsequent revision based on communication dated 18.03.2010 is clearly incorrect. The said communication also referred to DOPT Office Memorandum dated 14.10.2008 which has been quashed by order of the Principle Bench and the Hon'ble High Court of Delhi. Therefore he submitted that the applicant is entitled to a pension of Rs. 6750 w.e.f. 01.01.2006. The amount already recovered should also be returned.

11. The counsel for the respondents referred to the reply statement and particularly cited the order dated 18.10.2008 which says that the scale of Rs.

1400-2300 corresponds Rs. 4500-7000 in the Vth CPC. The counsel for respondents mentioned that the earlier PPO dated 24.02.2010 fixed pension wrongly and on receipt of further communication dated 18.03.2010 the PPO was revised further vide PPO dated 12.12.2013 by which the pension of the applicant was fixed at Rs. 6175. Since the applicant's pension was wrongly fixed earlier, he received extra payment and hence recovery was ordered. He also referred to the order passed by this Tribunal dated 09.06.2016 whereby revision of pension and recovery was upheld.

12. I have considered the facts of the case and also the the submissions made by either side. On the issue of delay in filing the OA I take note of the submissions made by the applicant seeking condonation of delay and considered the same. The delay is condoned and the matter is taken up on merit.

13. The issue related to pension to be allowed to the applicant following the VIth CPC recommendation. It is an admitted fact that the applicant at the time of retirement was in pay scale of Rs. 455-700 which corresponds to the pay scale of Rs. 1400-2300 under the IVth CPC. Following the 5th CPC recommendation, the respondents brought out the

Railway Services (Revised Pay) Rules 1997 vide RBE No. 138/1997. The First schedule shows the revised scale for posts in the present scales in Group D, C, B and A, except in respect of posts for which different revised pay scales are notified separately. In this schedule, the scale no. S8 which pertains to Rs. 1400-2300 was allowed scale of Rs. 4500-7000. However, Annex. B of the said RBE allowed revised pay scale of certain specialized categories of staff. Under these several categories, such as Commercial Clerk, Head Collector, Asst. Yard Master Gr. I, Junior Engineer Gr. II etc. who were all in the scale of Rs. 1400-2300 were granted revised scale of Rs. 5000-8000. There was no dispute to the fact that prior to 6th CPC recommendation, the applicant's pension was based on the scale of 5000-8000. Following 6th CPC recommendations, the scale of Rs. 5000-8000 was allowed PB-2 ie. 9300-34800 with Grade Pay of 4200 and the corresponding pension is Rs. 6750. The respondents referred to the communication dated 18.03.2010 saying that the replacement scale of Rs. 1400-2300 is Rs. 4500-7000 as mentioned in RBE No. 138/1997. However, it is to be noted that certain specialized categories of staff was allowed the scale of Rs. 5000-8000 though they were earlier in

scale of Rs. 1400-2300 and it include commercial department where the applicant was working. Therefore the persons who were in the scale of Rs. 5000-8000 have to be allowed the replacement scale of PB2 with GP 4200, following 6th CPC recommendations. The communication of 18.03.2010 mentioned that the corresponding scale of Rs. 1400-2300 is Rs. 4500-7000 under 5th CPC and not Rs. 5000-8000 under 5th CPC while this is so under normal circumstances but it does not apply to specific categories of staff who were allowed revised scale of Rs. 5000-8000 following the Vth CPC.

14. Both sides have made reference to judgements of Tribunals/ High Court/ Apex Court. OA 2111/2013 referred to by the respondents pertains to mistakes committed by the disbursing bank on making payment on revised rate and due to incorrect consolidation of pension and hence wanted to recover the amount. Hence this has no applicability to the present case. The order of hon'ble Apex Court in Civil Appeal No. 3500/2006, High Court of Punjab and Haryana vs Jagdev Singh pertains to the issue of recovery where undertaking was taken at a time of pay fixation for recovery of excess amount in the event of any mistake in the fixation of pay. This case has also no applicability to the present case. Learned

counsel for the applicant has referred to the order dated 10.02.2015 of the Principal Bench in O.A. 4098/2012 which considered OM dated 03.10.2008. Para 30 of the order stated as follows:

“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 accordingly do. Respondents are directed to refix the pension of all pre 2006 retirees w.e.f. 01.01.2006 based on the resolution dated 29.08.2008 and in light of our observations made above. Let the respondents refix 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 interests and costs.”

Hon'ble Delhi High Court in its order dated 29.04.2017 in Writ Petition No. 1535/2012 and also related Writ Petitions made similar observations. Para 26 of the said order says as follows:

“It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent OMs dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures 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 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”, this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is

to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to refix the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months, it will also carry interest @9% w.e.f. 01.03.2013. There shall, however, be no order as to costs.”

15. It is clearly evident from the records that the applicant who was working in the commercial department in pay scale of 1400-2300 was allowed the scale of Rs. 5000-8000 following the 5th CPC recommendation and in terms of RBE 138/1997. The said scale ie. 5000-8000 corresponds to pay scale of PB2 with Grade Pay 4200 following VIth CPC recommendation and based on which the minimum pension comes to Rs. 6750. Accordingly the pension payment order dated 24.02.2010 fixing the pension of the applicant at Rs. 6750 appears justified and the applicant is entitled to the same. The subsequent interpretation referring to the corresponding scale of Rs. 1400-2300 as 4500-7000 and PB-2 with Grade Pay of Rs. 2800 based the clarifications letter dated 18.08.2010 does not stand to any logic. It did not take into consideration the fact that the scale of 5000-8000 was allowed to certain categories which includes the commercial department where the

applicant was working. Hence the revised PPO issued on 12.12.2013 clearly appears to be incorrect and hence the same is quashed. It is held that the applicant is entitled to revised pension of Rs. 6750 w.e.f. 01.01.2006. The respondents are therefore, directed to restore the pension of the applicant to Rs. 6750 w.e.f. 01.01.2006 and make payment to the applicant accordingly. The amount recovered from the pension shall be refunded to the applicant. This shall be done within a period of 2 months from the receipt of the copy of the order.

16. The O.A. is accordingly allowed in terms of above. No order as to costs.

(Prasanna Kumar Pradhan)
Member (Administrative)

g.m.