

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 478 OF 2017

Date Of Decision:- 24th August, 2018.

CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).

Shri. B.T. Sherekar

Age 82 years,
Retired as SDE,
O/o. General Manager Telecom,
District Buldhana,
Khamgaon- 444303.
R/o. Jogeshwari Mandir,
Kala Maruti Road,
Old City Akola 444002.

....Applicant.

(Applicant by Advocate Ms. Priyanka Mehndiratta)

Versus

1. The Union of India,

Through The Secretary, Ministry of communication,
Department of Telecommunication,]
Sanchar Bhawan-20, Ashoka Road,
New Delhi 110001.

2. The Principal Controller of Communication Accounts,

CTO Old Building, Fountain,
Mumbai 400001.

...Respondents.

(Respondents by Advocate Shri. B.K. Ashok Kumar)

Reserved on: 13.08.2018

Pronounced on: 24.08.2018

ORDER

This application was filed on 02.08.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the Impugned order dated 31.03.2017 (A-1) respectively with all consequential benefits.

(b) The Hon'ble Tribunal may further be pleased to direct the Respondents to fix the Pension of the applicant at the rate of Rs.9375 in the Grade of Rs. 7500-12000 as is granted to other similarly situated employees.

(c) The Hon'ble Tribunal may further be pleased to grant arrears of Pension to the applicant along with interest at the rate of 18%.

(d) Cost of the application may pleased be provided for.

(e) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant retired as Sub-Divisional Engineer(SDE) on superannuation on 31.07.1991 in the pay scale of 2000-3500. Following the 6th CPC effective from 01.01.2006, his pension was revised by Department of Pensions vide F.No.38/37/08 P

& PW (A) dt. 28.01.2013 and he was placed in the revised scale of 6500-10500 and pension was fixed at Rs. 8145/- w.e.f. 24.09.2012 and which was later revised by giving effect to the revision from 01.01.2006. The applicant has argued that the scale for SDEs was revised to Rs. 7500-12000 as notified in G.S.R. 582(E) in Govt. of India, Ministry of Finance Gazette- Part C, Ministry of Communications dated 06.10.1997. However, instead of adopting this scale of 7500-12000 for fixing his pension, the lower scale of Rs. 6500-10500 was adopted for no valid reasons. However, he claims that other persons who were placed similarly, had received this benefit.

3. The respondents have affirmed that their fixation of revised scale at Rs. 6500-10500 was correct because the later scale of Rs. 7500-12000 was an upgraded scale provided to SDEs and was made available for post-2006 pensioners. This is based on the fact that the benefit of upgradation of post

would not be available to such pre-2006 retirees. They have also denied that the persons cited by the applicant have received any different benefit other than that they were entitled to as per rules considering that the upgradation was actually granted in 1997.

4. In his rejoinder, the applicant argues that it was the 5th Pay Commission which upgraded the scale Rs. 2000-3500 to Rs. 7500-12000 and that it was not an upgradation. He also affirms that orders fixing higher pension for two persons namely Shri S.W. Thakar and Shri M.G. Arokar had been fixed at a higher level and were subsequently revised downwards based on arguments similar to the arguments provided by the respondents while denying his claim.

5. In their reply to rejoinder, the respondents have provided an extract of the table in the Government's Resolution No. *G.I., M.F., No. 50(1)/IC/97, dated the 30th September, 1997, from its Annexure which is

brought out below:

2000-60-2300-75-3200 2000-60-2300-75-3200-100-3500.	S-12	6500-200-10500
2500-4000 (Proposed new pre-revised scale)	S-14	7500-250-12000

6. By reference to the table, they argue that the scale of the applicant at the time of his superannuation was correctly fixed at S-12 in Rs. 6500-200-10500 and he was not eligible for the upgraded scale. They contend that they had made a mistake in the case of the two persons referred namely S.W. Thakar and Shri M.G. Arokar and that error had been corrected.

7. We have gone through the O.A. alongwith Annexures A-1 to A-19, Rejoinder, filed on behalf of the applicant.

8. We have also gone through the reply, Reply to Rejoinder along with Annexure R1 to R4, filed on behalf of the respondents.

9. We have heard the learned counsel for the applicant and the learned counsel

for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

10. The settled issue that is agitated by the applicant is that the respondents have wrongly fixed in the pay scale of Rs. 6500-10500 but as brought out in their sur-rejoinder to which they have enclosed a copy of the Government's Resolution dt. 30.09.1997(supra), it is clear that there is no error on the part of the respondents in fixing the applicant's pay scale while revising his pension. Once he has been set in the pay scale of S-12 at Rs. 6500-10500, the consequent eligibility based on the 6th Pay Commission is also determined. It is also amply clear that any upgradation that has been granted subsequently cannot be made applicable to the applicant unless there is a specific dispensation to that effect. The respondents have also enclosed Annexure R-2, Office Memorandum No. 38/86/03-P&PW(A) dt. 26.04.2004 which refers to certain

queries raised by various departments and at the table under Para 3 against Row 7(ii), a specific query has been raised and answered as below:

"Query: *Whether the benefit of fixation of pension with reference to upgraded scales could be extended to pre-96 retirees also?*

Clarification: *Revision of pension in respect of pre-96 retirees will be on the basis of corresponding revised pay scales as on 01.01.1996. In other words, the benefit of upgraded pay scales will not be admissible in the case of pre-96 retirees."*

11. From the above, it is apparent that the respondents have correctly fixed the eligibility for pension of the applicant.

12. As regards his comparison with certain other retirees, he has referred to the case of Shri M.G. Arokar in whose case, pension was fixed at a higher level and then revised downwards in a manner similar to that of the applicant. That individual had contested the recovery of the excess payment and this application had been decided by this Tribunal in OA No. 253/2017 on 07.11.2017 and the OA had been allowed

permitting recovery of all the excess payments subject to a certain schedule.

13. Therefore, the applicant can also not accuse the respondents of any bias. In any event, errors, especially those which involve disbursement of public funds without reference to law and rules, cannot be perpetuated and cannot also become a basis for baseless claims such as those which have been made by the applicant.

14. In the circumstances, this OA is dismissed as lacking merits. No order as to costs.

(R. Vijaykumar)
Member (A)

Ram.