

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00968/2016

Tuesday, this the 12th day of March, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

K.Gopalakrishna Pillai,
S/o.late Kunjan Pillai,
Retired Postman (BCR),
Residing at Janaky Mandiram,
Vadakkumthala East P.O., Kollam – 690 536.

...Applicant

(By Advocate – Mr.V.Sajith Kumar)

v e r s u s

1. Union of India represented by the Secretary to the Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
 2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
 3. The Superintendent of Post Offices,
Kollam Postal Division, Kollam – 691 001.
 4. Director of Postal Accounts,
O/o.the Director of Postal Accounts,
Kerala Circle, 4th Floor, GPO Building,
Thiruvananthapuram – 695 001.
- ...Respondents

(By Advocate Mr.S.R.K.Prathap, ACGSC)

This Original Application having been heard on 5th March 2019, the Tribunal on 12th March 2019 delivered the following :

ORDER

The O.A is filed by Shri.K.Gopalakrishna Pillai, retired Postman (BCR) staking his claim for 50% of the pay as pension from the grade from which incumbent retired from service on the basis of the Government of India orders. The reliefs sought by the applicant in this O.A are as follows :

.2.

1. Quash Annexure A-1.

2. To direct the respondents to revise the pension of the applicant with effect from 1.1.2006 based on Annexure A-6 by releasing not less than 50% of the sum of the minimum of the pay, in the Pay Band and Grade Pay thereon (50% of 11,360/-) as the minimum basic pension to the applicant and release the arrears of pension with interest @ 9% per annum.

3. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant and

4. Grant the cost of this Original Application.

2. The brief facts of the case are that the applicant commenced his service as Postman on 25.3.1965 and retired as Postman in the BCR grade from Kollam Cutcherry P.O with effect from 31.8.1995. At the time of retirement his pension was fixed at Rs.587/- and thereafter during 5th Pay Commission it was revised to Rs.1800/- with effect from 1.1.1996 and after 6th Pay Commission the same was revised to Rs.4068/- with effect from 1.1.2006.

3. It is submitted that the 6th Pay Commission had recommended revision of pension for pre-2006 pensioners by recommending that the revised pension in no case shall be lower than the 50% of the minimum of the pay in the Pay Band plus the Grade Pay corresponding to the pre-revised pay scale from which the pensioner had retired. (A copy of the memo is available at Annexure A-2). However, this was later diluted by ordering that there will be pro rata reduction from the assured 50% to those who are having less than 33 years of qualifying service, a copy of the OM is available at Annexure A-3. The Full Bench of the Principal Bench considered Annexure A-3 in O.A.No.685/2010 and connected cases wherein after quashing Annexure A-3 directed the respondents to re-fix the pension of all the pre-2006 retirees with effect from 1.1.2006 based on

Annexure A-2. This order was challenged unsuccessfully before the Hon'ble High Court of Delhi and Hon'ble Supreme Court. Thus the order passed by the Principal Bench has attained finality. Accordingly the Government of India has issued orders fully implementing the judgments wherein 50% of the pension was offered without insisting on pro-rata reduction.

4. In view of the aforesaid orders issued by the Government of India applicant claims that he is entitled to 50% of the pay in the Pay Band Rs.5200-20200 with Grade Pay of Rs.2800/- and hence he is eligible to get Rs.5680/- as basic pension with effect from 1.1.1996. However vide Annexure A-1 his pension was fixed at Rs.4068/- by the office of the Director of Accounts. Aggrieved, the applicant has filed representation dated 20.8.2016, a copy of which is available at Annexure A-7, pointing out that he retired from the BCR grade with Grade Pay of Rs.2800/-.

5. As grounds the applicant submitted that after the declaration of law to get 50% of the basic pay as on 1.1.2006 as pension to pre-2006 pensioners irrespective of qualifying service, there was no justification for the respondent to deny the benefits to the applicant. He relied on the judgment of the Hon'ble Supreme Court in **D.S.Nakara & Ors. v. Union of India (1983) 1 SCC 305** and **Union of India v. SPS Vains (2008) 9 SCC 125** wherein it was held that the pensioners cannot be discriminated on the basis of pre 2006 and post 2006 considerations. The pensioners form a class as a whole and cannot be micro classified by arbitrary, manipulated and unreasonable eligibility criteria for the purpose of grant of pension, the apex court had pointed out.

6. The respondents in their reply statement submitted that the applicant retired on superannuation from the pay scale of Rs.975-1660/-. The corresponding scale as per the 5th Pay Commission was Rs.3200-85-4900 (BCR Scale) which was revised to Rs.5200-20200 + GP Rs.2000/- in 6th Pay Commission. The pay scale of Postman (BCR) was upgraded to Rs.4000-100-6000 with effect from 10.10.1997 only. It is pertinent to note here that as per OM dated 11.2.2009, a copy of which is available at Annexure R-2, pension fixation should be corresponding to the pre-revised pay scale from which the pensioner had retired and the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners and is applicable only to the serving employees as on 1.1.2006. Accordingly the applicant's pension was rightly found to be at Rs.4030/-. But since the applicant was already drawing more than the minimum pension of Rs.4030/-, the pension was correctly fixed at Rs.4068/- in accordance with prevailing rules and instructions.

7. A rejoinder has been filed by the applicant reiterating that he retired as a Postman from the BCR cadre. He was granted TBOP on completion of 16 years and BCR on completion of 26 years. It is further submitted that on implementation of 6th Pay Commission the Postman who obtained BCR were granted Grade Pay of Rs.2800/- as on 1.1.2006.

8. An additional reply statement has also been filed by the respondents reiterating their contentions. They relied on the orders of this Tribunal, passed in O.A.No.434/2017 and O.A.No.436/2017 which was disposed of vide order dated 18.12.2017 wherein the matter was remitted back to the

respondents to find out whether BCR/TBOP grade employees of pre-2006 would be eligible for a GP Rs.2800/ Rs.2400 (respectively) with entitlements to be calculated accordingly.

9. Heard Shri.V.Sajithkumar, learned counsel for the applicant and Shri.S.R.K.Prathap, learned ACGSC for the respondents. All pleadings both documentary and oral were perused.

10. The admitted facts in the case are that the applicant was a Postman in the BCR grade. On 10.10.1997 there was upgradation in the BCR Postman scale to Rs.4000-6000/-. On implementation of 6th Pay Commission those who obtained BCR were granted Grade Pay of Rs.2800/- as on 1.1.2006. The submission of the respondents that as per OM dated 11.2.2009 upgradation of scales is applicable only to the employees in service as on 1.1.2006 and not applicable to the pre-2006 pensioners, has to be seen in the background of the O.M having been quashed and set aside by the Principal Bench by its Full Bench decision in O.A.No.3079/2009 and connected cases dated 1.11.2011. The operative portion of the order reads as follows :

29. From the above extracted portion it is clear that the principle of modified parity, as recommended by the V CPC and accepted by the VI CPC and accepted by the Central Government provides that revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and grade pay corresponding to revised pay scale from which the pensioner had retired. **According to us, as already stated above, in the garb of clarification, respondents interpreted minimum of pay in the pay band as minimum of the pay band.** This interpretation is apparently erroneous, for the reasons:

a) if the interpretation of the Government is accepted it would mean that pre-2006 retirees in S-29 grade retired in December, 2005 will get his pension fixed at Rs.23700/- and another officer who retired in January 2006 at the minimum of the pay will get his pension fixed at Rs.27350/-. This hits the very principle of the modified parity, which was never intended by the Pay Commission or by the Central Government;

b) The Central Government improved upon many pay scales recommended by the VI CPC. The pay scale in S-29 category was

improved from Rs.39200-67000/- plus Grade Pay of Rs.9,000/- with minimum pay of Rs.43280/- to Rs.37,400-67000/- with grade pay of Rs.10,000/- with minimum pay of Rs.44,700/- (page 142 of the paper-book). If the interpretation of the Department of Pension is accepted, this will result in reduction of pension by Rs.4,00/- per month. The Central Government did not intend to reduce the pension of pre-2006 retirees while improving the pay scale of S-29 grade;

c) If the erroneous interpretation of the Department of Pension is accepted, it would mean that a Director level officer retiring after putting in merely 2 years of service in their pay band (S-24) would draw more pension than a S-29 grade officer retiring before 1.1.2006 and that no S-29 grade officer, whether existing or holding post in future will be fixed at minimum of the pay band, i.e., Rs.37,400/-. Therefore, fixation of pay at Rs.37,400/- by terming it as minimum of the pay in the pay band is erroneous and ill conceived; and

d) That even the Minister of State for Finance and Minister of State (PP) taking note of the resultant injustice done to the pre-11.2006 pensioners (pages 169-170) had sent formal proposal to the Department of Expenditure seeking rectification but the said proposal was turned down by the officer of the Department of Expenditure on the ground of financial implications. **Once the Central Government has accepted the principle of modified parity, the benefit cannot be denied on the ground of financial constraints and cannot be said to be a valid reason.**

30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix 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 interest and costs.

(emphasis supplied)

11. Moreover the judgments of the Hon'ble Supreme Court in **D.S.Nakara** (supra) and **SPS Vains** (supra) is clear and unequivocal on the subject, in hand holding that the pensioners form a class as a whole and cannot be micro classified by arbitrary, manipulated and unreasonable eligibility criteria for the purpose of grant of pension. The relevant portion of the judgment in **SPS Vains** (supra) is extracted below :

26. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in the case of

D.S. Nakara (supra) where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that [Article 14](#) of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counter productive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of [Article 14](#) of the Constitution.

12. In view of the above, the O.A is allowed. While quashing and setting aside Annexure A-1, the respondents are directed to revise the pension of the applicant with effect from 1.1.2006 by granting 50% of the sum of the minimum of the pay in the Pay Band and Grade Pay thereon as the minimum basic pension ie. Rs.5680/- with all consequential benefits arising therefrom within a period of three months from the date of receipt of a copy of this order. However, consequential reliefs relating to arrears is restricted to a period of three years prior to the date of filing of the O.A. There shall be no order as to costs.

(Dated ts the 12th day of March 2019)

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00968/2016

- 1. Annexure A1** - A true copy of the Order No.Pen-4/C.No./PPO No.6587/LPS/TVM dated 20.7.2016 issued by the 4th respondent.
 - 2. Annexure A2** – A true copy of the Memo No.38/37/08-P&PW(A) dated 1.9.2008 issued by the Department of Pension and Pensioners Welfare.
 - 3. Annexure A3** – A true copy of the Office Memorandum No.38/37/08-P&PW(A) dated 14.10.2008 issued by the Department of Pension and Pensioners Welfare.
 - 4. Annexure A4** - A true copy of the judgment dated 29.4.2013 in W.P. (C) No.1535/2012 before the Hon'ble Delhi High Court at New Delhi.
 - 5. Annexure A5** - A true copy of the Office Memorandum F.No.38/37/08-P&PW(A) dated 28.1.2013 issued by the Department of Pension and Pensioners Welfare.
 - 6. Annexure A6** - A true copy of the Order F.No.38/37/08-P&PW(A) dated 6.4.2016 issued by the Department of Pension and Pensioners Welfare.
 - 7. Annexure A7** – A true copy of the representation dated 20.8.2016 submitted by the applicant to the Director of Accounts.
 - 8. Annexure A8** – A true copy of the Office Memorandum F.No.38/37/2016-P&PW(A) dated 4.8.2016 issued by the Department of Pension and Pensioners Welfare.
 - 9. Annexure A9** - A true copy of the Office Memorandum No.38/37/2016-P&PW(A) dated 12.5.2017 issued by the Department of Pension & Pensioners Welfare.
 - 10. Annexure R1** - A true copy of the O.M.F.No.38/37/08-P & PW(A) dated 6.4.2016 issued by the Ministry of Personnel, Department of Pension and Pensioner's Welfare.
 - 11. Annexure R2** - A true copy of the O.M.No.38/37/08-P & PW(A) dated 11.2.2009 issued by the Department of Pension and Pensioner's Welfare.
 - 12. Annexure R3** - A true copy of the Order dated 29.9.2014 in O.A.No.157/2014 of this Hon'ble Tribunal.
 - 13. Annexure R4** - A true copy of the Department of Pension & Pensioner's Welfare O.M.No.38/37/08-P&PW(A) dated 11.2.2009.
 - 14. Annexure R5** - A true copy of the order dated 18.12.2017 in O.A.No.434/2017 and O.A.No.436/2017 of this Hon'ble Tribunal.
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