

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00828/2017

Thursday, this the 31st day of January, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Johny T.M., aged 66 years, S/o. C.A. Mathew,
 TGT (English), (Retired), Residing at Theekkanath (House),
 Evershine City Varadiyam, Avanoor PO, Thrissur,
 Kerala – 680 541. **Applicant**

(By Advocate : Mr. Biju P.N.)

V e r s u s

1. The Commissioner, Kendriya Vidyalaya Sangathan,
 New Delhi – 110 016.
2. The Deputy Commissioner, Kendriya Vidyalaya Sangathan,
 Regional Office, Ernakulam – 682 020.
3. The Joint Commissioner (Finance), K.V.S. 18,
 Institutional Area Shahidsingh Marg,
 New Delhi – 110 016. **Respondents**

(By Advocate : Mr. K.I. Mayankutty Mather)

This application having been heard on 31.01.2019 the Tribunal on the same day delivered the following:

O R D E R (Oral)

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “i. To call for the records leading to Annexure A6 and A8 and set aside the same.
- ii. To direct the respondent to fix the monthly pension of the applicant in tune with pre 2006 pensioners as on 1.1.2006 as recommended by the Sixth Central Pay Commission with all consequential benefits.
- iii. To direct the respondents to sanction and disburse the arrears of

pension w.e.f. 1.1.2006.

iv. To call for records leading to Annexure A7 and set aside the same.

v. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.”

2. The brief facts of the case are that the applicant was appointed as a Teacher in Kendriya Vidyalaya Sangathan (KVS in short) in 1974 in Chennai region and he worked at various schools of KVS in different regions in India. The applicant completed 30 years of unblemished service and took voluntary retirement due to ill health in November, 2003. The pension of the applicant was fixed at Rs.4,425/- After retirement the applicant was granted selection grade and accordingly, the pay of the applicant was revised in the existing pay band of Rs. 7,5000-12,000/- to Rs. 15,600-39,100/- with Grade pay of Rs. 5,400/- w.e.f. 1.1.2006. As per the 6th Pay Commission recommendations, the full pension of all pensioners irrespective of their date of retirement shall not be in any case less than 50% of the minimum of the pay in the revised scale. On the basis of the pay revision order the pension of the applicant was revised to Rs. 10,002/-. However, the applicant is eligible for Rs. 10,500/- as his pension ought to have been fixed at 50% of the minimum of the scale of Rs. 15,600-39100/- plus GP of Rs. 5,400/- (Rs. 15600+5,400=21,000/- and 50% is Rs. 10,500/-). But the pension of the applicant had been fixed at Rs. 10,002/- with a reduction of Rs. 498/-. The applicant submitted a representation pointing out the above but his representation was rejected stating that the pension of the applicant is fixed as per rule and no revision can be given as claimed by the applicant. Further it was also mentioned in the impugned

order that the pension can be fixed only at a reduced rate because they are pre-2006 pensioners and only 2006 pensioners are eligible for 6th Pay Commission and consequent orders passed by the government. Aggrieved the applicant has approached this Tribunal with the present OA.

3. Notices were issued to the respondents. They have entered appearance through Mr. K.I. Mayankutty Mather and filed a reply statement. The stand taken by the respondents in the reply statement is that the Government of India, Ministry of Personnel, PG & Pensions, vide OM dated 28th January, 2013 decided that pension of pre-2006 pensioners as revised w.e.f. 1.1.2006 in terms of paragraphs 4.1 and 4. 2 of OM dated 1.92008, 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 grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. The respondents further contended that the pay scales of teachers were upgraded on the recommendations of the 6th CPC with effect from 1.1.2006 and accordingly, the pre-revised scale of Rs. 7,500-12,000/- was upgraded to PB-3 Rs. 15,600-39,100/- with Grade Pay of Rs. 5,400/-. This is applicable only to the Teachers who were on the rolls as on 1.1.2006 and therefore, revision of pension by taking into account the upgraded pay is only applicable to the employees who are on the rolls as on 1.1.2006. The pension of the applicant as on 1.1.2003 was fixed as per 5th CPC as Rs. 4,390/- and the same was revised on grant of Selection Scale as Rs. 4,425/-. Further the pension of the applicant was reviewed following the Government of India orders and Rs. 10,002/- was granted to the applicant vide PPO dated 11/18.4.2016.

Respondents pray for dismissing the OA.

4. Heard Shri Biju P.N., learned counsel appearing for the applicant and the learned Standing Counsel appearing for the respondents. Perused the records.

5. The Hon'ble Supreme Court in ***K.S. Krishnaswamy etc. v. Union of India & Anr.*** - Appeal (Civil) No. 3174 of 2006 dated 23.11.2006 held as under:

"It is common knowledge that an increase in the pay scale in any recommendation of a pay commission is a corresponding increase in the pay scale. In our view, therefore, Executive Instructions dated 11.5.2001 have been validly made keeping in view the recommendations of the Pay Commission accepted by the Policy Resolution of the Government on 30.9.1997, clarified by Executive Instructions dated 17.12.1998. The Executive Instructions dated 11.5.2001 neither over-ride the Policy Resolution dated 30.9.1997 nor Executive Instructions dated 17.12.1998 clarifying the Policy Resolution dated 30.9.1997. The Executive Instructions dated 11.5.2001 were in the form of further clarifying the Executive Instructions dated 17.12.1998 and do not over-ride the same.

Counsel for the appellants heavily relied on the Constitution Bench decision of this Court in ***D.S. Nakara v. Union of India*** (1983) 1 SCC 305 where this Court at Page 345 SCC observed that "liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement."

Nakara's case (supra) has been distinguished by this Court in State of Punjab & Ors. v. Boota Singh & Anr. (2000) 3 SCC 733; ***State of Punjab & Anr. v. J.L. Gupta & Ors.*** (2000) 3 SCC 736; ***State of West Bengal and Anr. v. W.B. Govt. Pensioners' Association & Ors.*** (2002) 2 SCC 179; and ***State of Punjab & Ors. v. Amar Nath Goyal & Ors.*** (2005) 6 SCC 754.

Nakara's case (supra) was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut off line and granting the revised pensionary benefits to employees retiring on or after the cut- off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The facts of Nakara's case (supra) are not available in the facts of

the present case. In other words, the facts in Nakara's case are clearly distinguishable.

In [Indian Ex-Services League v. Union of India](#) (1991) 2 SCC 104, this Court distinguished the decision in Nakara's case (supra) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. In [K.L. Rathee v. Union of India](#) (1997) 6 SCC 7, this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. In our view, therefore, the ratio in Nakara's case (supra) is not applicable in the facts of the present case. Lastly, it is contended that against the decision of the Delhi High Court, an SLP was dismissed by this Court on 8.7.2004 and, therefore, the doctrine of merger applies. It is not disputed that the SLP was dismissed in limine without a speaking order. This question has been set at rest by a three-Judge Bench of this Court in [Kunhayammed & Ors. v. State of Kerala & Anr.](#) (2000) 6 SCC 359, where this Court after referring to a two-Judge Bench, of this Court in [V.M. Salgaokar & Bros. \(P\) Ltd. v. CIT](#) (2000) 5 SCC 373 held at page 375 (para 22) SCC as under:

"22. We may refer to a recent decision, by a two- Judge Bench, of this Court in [V.M. Salgaokar & Bros. \(P\) Ltd. v. CIT](#) (2000) 5 SCC 373 holding that when a special leave petition is dismissed, this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court means is that it does not consider it to be a fit case for exercising its jurisdiction under [Article 136](#) of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case the Supreme Court upholds the decision of the High Court or of the Tribunal. This doctrine of merger does not apply in the case of dismissal of a special leave petition under [Article 136](#). When appeal is dismissed, order of the High Court is merged with that of the Supreme Court. We find ourselves in entire agreement with the law so stated. We are clear in our mind that an order dismissing a special leave petition, more so when it is by a non-speaking order, does not result in merger of the order impugned into the order of the Supreme Court."

Therefore, when the special leave petition is dismissed by the Supreme Court under [Article 136](#) of the Constitution, the doctrine of merger is not attracted.

For the reasons aforesaid, the view taken by the Madras High Court that the clarificatory Executive Instructions in O.M. dated 11.5.2001 are an integral part of the O.M. dated 17.12.1998 clarifying the Policy Resolution of the Government dated 30.9.1997 and do not over-ride the original O.M. dated 17.12.1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that O.M. dated 11.5.2001 over-rides the original O.M. dated 17.12.1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside. The net result is that the Civil Appeal Nos. 3174 and 3173 of 2006, preferred by the pensioners, are dismissed and the Civil Appeal Nos. 3188, 3189 and 3190 of 2006, preferred by the employer Union of India, are allowed. The Judgment and order of the Madras High Court dated 29.4.2005 is affirmed. The Judgment and Orders of the Delhi High Court dated 17.8.2005, 5.9.2005, 10.11.2005 and 3.8.2005 are set aside.

Parties are asked to bear their own costs.”

6. It has to be noted at the outset that the pay revision and revision of pension based on the 6th CPC have been brought into effect by the decisions of Government of India. Vide office memorandum No. 38/37/08-P&PW(A), dated 01.09.2008 the Government’s decision on the recommendations of the 6th CPC revising the pension of number of pensioners/family pensioners was conveyed. Paragraph 4.2 reads as follows:

“4.2 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 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. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.”

(emphasis supplied)

7. The most important portion of the aforequoted OM which tends to escape from the sight of a casual reader is that the revised pension shall in no case be lower than 50% of the minimum of the pay in the pay band plus **grade pay corresponding to the pre-revised pay scale from which the pensioner had retired**. One can not lose sight of the importance of the wordings of paragraph 4.2 because revision of pay and revision of pension is within the policy domain of the Government. When the Government of India’s decision on the 6th CPC recommendations has been made clear in OM dated 1.9.2008 every revision relating to pre-2006 pensioner has to go by paragraph 4.2 (*supra*) of the said OM. In this context we feel it appropriate to quote relevant portion of the order passed by the co-ordinate Bench of this Tribunal at Chandigarh on 01.09.2016 in OA No.

060/00912/2015 which reads as follows:

“8. According to OMs dated 27.10.1997 and 17.12.1998 for revision of pension w.e.f. 01.01.1996, pension has to be revised according to fitment formula given therein and then the revised pension, if less than the minimum for the corresponding revised pay scale, was to be stepped up to the said minimum amount. Similarly, w.e.f. 01.01.2006 according to OM dated 01.09.2008 revised pension has to be fixed as per fitment formula given in para 4.1 thereof, and then as per para 4.2 thereof, the revised pension was in no case to be lower than 50% of minimum of the pay in the Pay Band + Grade Pay corresponding to the pre-revised scale from which the pensioner had retired. It is, thus, manifest from the bare perusal of these OMs that only pension had to be revised. There is no provision in the OMs for notional fixation of revised pay of the pensioners in the corresponding revised pay scales and then revising their pension. On the contrary, formula for fixing revised pension directly has been given in the OMs. According to the said formula, existing pension along with dearness pension etc. has to be taken into consideration and then some fitment weightage has to be given to arrive at the revised pension. For this purpose, even reference to corresponding revised pay scale is not there in the OMs. Reference to corresponding revised pay scale comes in the context of minimum pension. The revised pension should not be lower than 50% of minimum revised pay scale/Pay Band + Grade Pay corresponding to pre-revised pay-scale. In this context only, the revised pay-scale/Pay Band + Grade Pay comes into picture. There is no reference at all to notional fixation of pay in the corresponding revised pay-scale/Pay Band + Grade Pay for revising the pension of pensioners who had retired prior to 01.01.1996/01.01.2006. Thus, the very basis of claim of the applicants that their pay has to be notionally fixed in the revised pay-scale (for revising their pension) does not exist in any of the relevant OMs. It is, thus, manifest that revised pension of the applicants has been rightly fixed by the respondents w.e.f. 01.01.1996 and 01.01.2006, as detailed in chart (Annexure R-6)”

8. This Tribunal is of the view that the aforesaid decision is squarely applicable in the instant case also. In the light of the above discussion, we hold that the OA has no merits and is only to be dismissed. We do so. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00828/2017**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of the revised pay order by the 1st respondent dated 2.5.2011.

Annexure A2 - True copy of the GoF. No. 38/37/08-P&PW(A) dated 28.1.2013.

Annexure A3 - True copy of the pension revision order by the 1st respondent dated 11.4.2016.

Annexure A4 - True copy of the representation dated 10.5.2016.

Annexure A5 - True copy of the recommendation letter dated 12.4.2016.

Annexure A6 - True copy of the rejection order and pay fixation order dated 7.11.2016.

Annexure A7 - True copy of the communication dated 21.10.2016.

Annexure A8 - True copy of the order F.3-04/KVS(CHER)/2009-10/1036 dated 14.7.2011.

Annexure A9 - True copy of the order dated 16.6.2015.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-