

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/68/2018

**Reserved on: 12.12.2018
Order pronounced on: 27.12.2018**

Between:

M. Sivarama Krishna, S/o. late Sri Rama Murthy,
Aged about 66 years, Retired LDC,
National Savings Institute, R/o. Plot No. 46,
Opp. Sri Ramulu Residency, Narayana Reddy Colony,
Ramachandrapuram PO – 502 032,
Medak District, Telangana State.

...Applicant

And

The Union of India, rep. by

1. Regional Director, National Savings Institute,
Kendriya Sadan, 1st Floor, F Wing,
Koramangala, Bengaluru – 560 034.
2. The Joint Director,
National Savings Institutes,
Ministry of Finance, Department of Economic Affairs,
ICCW Building, 4-Deen Dayal Upadhyaya Marg,
New Delhi – 111 002.
3. The Secretary to Govt. of India,
Ministry of Finance,
Department of Pensions and Pensioners Welfare,
Lok Nayak Bhavan, Khan Market, New Delhi – 110 003.

...Respondents

Counsel for the Applicant	...	Mr. E. Krishna Swamy
Counsel for the Respondents	...	Mr. Bheem Singh, Advocate for Mr. M. Brahma Reddy, Sr. PC for CG

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the rejection of the representations of the applicant for revision of his pension from 1.1.2006 purported to be as per 6th CPC recommendations.

3. Brief facts of the case are that the applicant voluntarily retired from the respondents' organisation on 12.5.1999 after 23 years of service in the pay scale of Rs 3050-4590 with the last pay drawn as Rs 4590. Giving weightage of five years as then available, his pension was fixed on pro rata basis reckoning his total service as 28 years, at Rs.1948 which came to be revised to Rs 4404 under the 6th Pay Commission recommendations w.e.f 1.1.2006. The applicant represented for a pension of Rs.5188 based on 50% of last pay drawn without any pro-rata reduction w.e.f 1.1.2006 but was not conceded to and hence the O.A.

4. The contentions of the applicant are that the Govt. has accepted the 6th CPC recommendation and as per para 4.2 of the Govt. resolution dt 29.8.2008 he is entitled to the benefits available under the Sixth Pay Commission Recommendations. The Hon'ble Supreme Court judgments in D.S.Nakara v U.O.I in AIR 1983 SC 130, V.Kasturi v Managing Director, State Bank of India & anr, 1998 (8) SCC 30; U.O.I and anr vs. S.P.S Vains (retd) and ors in (2008) 2 SCC (L&S) 838, Principal Secretary to Govt., Finance and Planning vs A.P Pensioners Samaj in CA Nos.5367-5368 of 2005, U.O.I v K.Venugopalan Nair, Retd. Scientist/Engineer-SG and Anr. Etc. in CC No (s) 2001-2002/2015 squarely cover the case. Besides, Hon'ble High Court of Andhra Pradesh in W.P Nos 16719 & 18490/2003 has held that the pensioners who are already drawing pension cannot be denied the revision of pension on the basis of the revised formula. Further, the Hon'ble Principal Bench of this Tribunal upheld the contention of the applicant in a similar OA 655/2010 and other relevant cases. The Min. of Personnel, PG &Pensions has issued OM's dt 30.7.2015 & 6.4.2016 implementing the Hon'ble Supreme Court orders.

Based on the said orders the applicant claims Rs 5188 as the revised pension whereas the respondents granted Rs 4,404.

5. Respondents contend that as per their PAO, Nagpur office lr. dt 4.12.2014 the applicant is eligible only for a revised pension of Rs 4,4,04 and that they have implemented the orders contained in the relevant O.Ms of DOPT while working out the pension of pre -2006 pensioners. In particular, based on O.Ms dated 28.1.2013 and 30.7.2015. The O.M dt 30.7.2015 has directed modifying the instruction contained in O.M dt 28.1.2013 only in regard to revision of pension w.e.f 24.9.2012 to 1.1.2006. The fitment table annexed to the O.M dt. 28.1.2013 indicates the corresponding pay scale relevant to the applicant as Rs 5200-20,200 with G.P of Rs.1,900 in P.B-1 . Accordingly 50% of minimum pay (Rs.7780) in the pay band comes to Rs.3890. However, the consolidated pension as per O.M dt 1.9.2008 is Rs 4404 which is higher than Rs 3890 and hence the pension was revised to Rs 4,404. The latest O.M dt 6.4.2016 issued by DOPT has once again clarified that the revised consolidated pension of pre -2006 pensioners shall not be lower than 50% of the minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Therefore, the pension of Rs.4,404 was correctly worked out and granted as per the O.Ms cited. The applicant is under the wrong notion that his pension has to be re-fixed based on the scales of the serving employees of the 6th C.PC. When the pension was revised based on 7th CPC recommendations the applicant thanked the respondents but did not protest about the revision of pension in regard to 6th CPC.

6. Heard the learned counsel and went through the records submitted.

7A. The dispute is in regard to the calculation of the revised pension based on the 6th CPC recommendations which have been accepted by the Govt. As per 5.1.33 & 5.1.47 of the 6th CPC recommendations, given below, pension has to be revised from 01-01-2006. It may be noted that these recommendations have been accepted by the Govt. vide Govt. resolution dt.29.8.2008.

5.1.33

“Linkage of full pension with 33 years qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn whichever is most beneficial to the retiring employee. “

5.1.47

“all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of the 50% dearness allowance/ dearness relief as dearness pension respectively. The increase will be allowed by subsuming the effect of conversion of 50% of the dearness relief / dearness allowance as dearness pension/ dearness pay. Consequently, dearness relief at the rate of 74% on pension has been taken for the purposes of computing revised pension as on 1.1.2006. This is consistent with the fitment benefit being allowed in case of the existing employees.

The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than the 50% of the sum of the minimum of the pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised scale from which the pensioner had retired.”

B. The notification dt. 29.8.2008 the provenance for issue of memo dt. 1.9.2009 dealing with pre 2006 pensioners. Thus pension has to be fixed as per clauses 5.1.47 and 5.1.33 of the 6th CPC as contained in notification dt. 29.8.2008 and O.M dt 1.9.2008. The concordance table (CT) attached to the

O.M dt 1.9.2008 indicates the pension to be fixed as on 1.1.2006. Accordingly the pension due to the applicant as per the concordance table is Rs.5188 which is higher than the minimum of the pay of the corresponding pay band. Therefore, the revised pension has to be Rs.5188.

C. Besides, the Hon'ble Supreme Court, in judgments cited by the applicant, has laid down the law wherein it was directed to re-fix the pension as 50 % of the last pay drawn and it should not be less than the minimum of the pay band corresponding to the pay scale in which the pensioner has retired. The Hon'ble High Court of A.P and the Hon'ble Principle Bench of this Tribunal have also delivered verdicts which go in favour of the applicant. This Tribunal too in OAs 518/2015, 401/2015, 402/2015, 404/2015, 482/2015, 568/2015, 716/2015, 717/2015, 718/2015, 807/2015, 1039/2015 & 165/2018 vide a common order dt.16.11.2018 has ordered revision of pension based on the 6th CPC recommendations and in accordance with the orders of the superior judicial fora. Hence, it would suffice to say that the case in question is a fully covered case by the judgments referred to so far as entitlement to 50% of minimum pay in the revised scale as pension, subject to fulfilment of attendant conditions.

D. Therefore the OA has to be allowed. However the applicant prayed that the respondents should be ordered to re-fix the pension and pay the arrears in 2 months time. The learned counsel for the applicant has also harped on the same repeatedly. Nevertheless, it needs to be appreciated that the revision of pension has to be processed by the different wings of the department, concerned Ministry and sometimes in consultation with various Ministries like Ministry of law, Ministry of Finance, Min. of Personnel etc for taking steps to

properly implement any court order. Therefore reasonable time has to be given for the respondents to comply, which in the present case cannot be less than 7 months, as was earlier fixed in similar OAs allowed by this Tribunal on 16.11.2018. Therefore this Tribunal has to respectfully abide by the binding precedents in regard to the time line stipulated in the cited judgment. Albeit, outer limit prescribed is one year, this Tribunal in order to strike a balance between the practicality in implementing the judgment and the age factor of the applicant, has taken the view that the reasonable period can be 7 months and definitely not 2 months as claimed by the applicant.

E. Further, the learned counsel has pleaded that the arrears of pension has to be paid from 1.1.2006 and it should not be curtailed. In this regard the observation of the Hon'ble Supreme court in Union of India v Tarseem Singh in CA 5151 of 2008 -5152 of 2008 is relevant, wherein the Hon'ble Supreme Court while referring to the judgments in [In M. R. Gupta vs. Union of India](#) [1995 (5) SCC 628], [Shiv Dass vs. Union of India](#) - 2007 (9) SCC 274, and to [section 23](#) of Limitation Act, 1908 corresponding to [section 22](#) of Limitation Act, 1963 has held as under

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay

would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

F. The learned counsel for the applicant referred to the orders of Hon'ble Bangalore, Ernakulam benches of this Tribunal and also to the observations of Hon'ble High Court of Delhi and Hon'ble High Court of Kerala in support of his contention for payment of arrears of pension from 1.1.2006. The claim for arrears of pension is nearly 12 years old. It comes under the ambit of the observation made by the Hon'ble Supreme Court referred to in para 7(E). Hence this Tribunal respectfully abides by the order of the Hon'ble Supreme Court in the cited judgment. This Tribunal has taken the stand of confining arrears of pension to 3 years in Original Application Nos.518/2015, 401/2015, 402/2015, 404/2015, 482/2015, 568/2015, 716/2015, 717/2015, 718/2015, 807/2015, 1039/2015 & 165/2018. The same holds good even in the present case as well and the claim of the applicant for payment of revised rates of pension right from 01-01-2006 fails. All that could be granted to the applicant is the higher rate of pension for a period reckoned from three years anterior to the date of filing of the OA.

G. Thus based the aforesaid discussion, the OA is allowed to the extent as hereunder and the respondents are directed to consider as under:

- i) Revising pension of the applicants based on the recommendation of the 6th CPC and accepted by the Govt, by working out the pension as 50 percent of last pay drawn using the Concordance table appended to O.M dt 1.9.2008 issued by Dept of Pension and Pensioners' Welfare, G.O.I
- ii) Working out and release the arrears of pension for a period of 3 years prior to the date of filing the OA as per para 5 of the verdict of the Hon'ble Supreme Court in CA No. 5151 of 2008 – 5152 of 2008 in Union of India & Others Vs. Tarseem Singh.
- iii) Time calendared to comply with the order is 7 months from the date of receipt of this order.
- iv) No order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 27th day of December, 2018

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