

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

Original Application No.21/522/2016

Reserved on: 19.11.2018

Order pronounced on: 11.12.2018

Between:

Ch. Janardhana Rao, S/o. late Venkatesham,
Aged 83 years, Retired Chief Clerk,
Railway Recruitment Board, S.C. Railway,
H. No. 12-10-590/127/1, Warasiguda,
Secunderabad – 500 061.

...Applicant

And

The Union of India, Rep. by

1. The F.A. & C.A.O.,
O/o. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 071.
2. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 071.
3. The Secretary to Govt. of India,
Ministry of Per. P. G. & Pensions,
Dept of Pensions, 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. M. Brahma Reddy

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

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

The OA is filed against impugned order dt 13.4.2016 rejecting the representation of the applicant requesting revision of pension.

2. Brief facts of the case are that the applicant retired as Chief Clerk in Respondents Organisation on 31.12.1990. The post of Chief Clerk is also designated as Head Clerk/Dy. Accountant/ Office Supdt. Gr-II/ Assistant etc. in Respondents Organisation and other Central Govt. Departments. The initial Supervisory posts were placed in the 4th CPC in 2 scales of pay of Rs.1400-2600 & Rs.1600-2660 which were merged in 5th CPC into a single scale of Rs.5000-8000. The promotion was supposed to be from Gr-II to Gr I with scale of pay in Rs.1640 – 2900 in 4th CPC and in 5th CPC it is Rs.5500-9000. In 5th CPC posts of Gr -II and Gr –I were placed in the scale of pay of Rs.5500 – 9000. In 6th CPC the post of Gr – II ceased to exist. As per 6th CPC, the scale of pay of Chief clerk/ Office Supdt (OS) –I/Office Supdt (OS) –II/ Asst etc from 1.1.2006 is in Pay Band (PB) -2 of Rs.9300 – 34,800 with Grade pay of Rs. 4200. The pay at the minimum including Grade pay is Rs 14,430. The pension @ 50 % of the minimum of pay is Rs.7215, whereas the applicant is being paid Rs.6750 w.e.f 1.1.2006 and hence the grievance leading to the filing of the present OA.

3. The contentions of the applicant are that the pension has to be re-fixed as per clause 4.12 of Govt. of India resolution dt 29.8.2008 accepting the recommendations of the 6th CPC. The applicant took support of the Honourable Supreme Court judgment in ***Union of India Vs. K. Venugopalan Nair in C.C. No(s). 2001-2002/2015*** and clause 168.3 of 5th CPC report to further his case. Further a similarly placed employee in the rank of Inspector General of Police, when he approached this Tribunal in OA 266/2002 was given relief as is presently sought by the applicant. The scale of pay was also shown as Rs.5500-9000 in lr dt 3.9.2009 of the Respondents. Applicant claims that since his case is a covered case it has to be allowed and relief granted. The applicant has also filed two rejoinders and an MA No.204/18 in support of his claim.

4. Respondents refute the contentions of the applicant by claiming that the scale of pay of the OS –II was fixed as Rs.1600-2660 in 4th CPC and Rs.5000-8000 in 5th CPC and in respect of O.S –I as Rs.2000-3200 in 4th CPC and Rs.6500-10,500 in 5th CPC respectively. Therefore they are clearly differentiated. The 5th CPC has identified the corresponding scale for the post held by the applicant in 4th CPC as Rs.5000-8000. The scale of pay of OS-II in 6th CPC is Rs.9300 -34,800 with G.P of Rs.4200. Based on Railway Board letter RBE No.11/2013 (Annexure R-1) the pension of the applicant was correctly fixed as Rs.6750. The CPO/SC has wrongly shown the scale of the applicant in 5th CPC as Rs.5500-9000 in lr. dt. 3.9.2009 but correctly equated the scale to Rs.9300 – 34,800 with G.P of Rs 4200. The pension would thus be Rs (9330 + 4200)/2 =6,750. As per the fitment factor it has to be 2.26 X 2760 = Rs 6237.60. However, since this amount being less than the minimum of the pay band plus the Grade pay which is Rs.6750, the pension has been fixed at Rs.6750, as per Railway Board instructions. dt 11.2.2013.

5. Heard the counsel and perused the documents on record. Both the counsel argued in tandem with their written submissions.

6. The issue is in regard to merger/up-gradation of pre-revised scales of Rs.5000-8000 & Rs.5500-9000. The Respondents claim that the later scale is applicable to OS-I and not to OS-II. However, the applicant has submitted vide his rejoinder dt 20.3.2017 the OMs of the Dept. of Company Affairs dt. 28.2.2003 and Dept. of Expenditure dt 13.11.2009, which indicate that both the scales are placed in P.B-2 of 6th CPC in Rs.9300-34,800 with Grade pay of Rs.4200. The main contention is that the minimum pay in P.B-2 with Grade pay of Rs.4200 associated with the scale of pay of Rs.5500-9000 pre-1.1.2006 is Rs.14,430. Hence the pension has to be fifty percent of Rs.14,430 which is

Rs.7215. The applicant has also quoted the judgment of Honourable High court of Punjab and Haryana in ***Agia Ram and Others vs Union of India in CWP No. 9581-CAT of 2011*** on 24.8.2011 in support of his contention as under:

“5. we are of the considered view that once the post of Mistri Cum Supervisor has acquired a new nomenclature and it has also been given higher scale of pay, then the cosmetic cover which has been put forward by the Respondent cannot be permitted to hide the real face of the erstwhile Mistry/Supervisor. For all instants and purposes, they would all be treated as Junior Engineer-II. Once the pay scale of the post of Mistri/Supervisor is deemed to be revised then their pension is also required to be re-fixed w.e.f 1.11.2003.

6. As a sequel to the above discussion, the writ petition is allowed. The judgment of the Tribunal is set aside. It is directed that the Respondents shall re-fix the pay of the petitioners in the pay scale of Rs.5000-8000 by treating them under the new nomenclature given to the post of Mistri Cum Supervisor i.e. Junior Engineer-II. Accordingly their pension be revised w.e.f 1.11.2003... ”

Similarly placed persons were forced to approach the Honourable High Court of Punjab and Haryana in W. P Nos.8563 of 2014 and connected writ petitions. The Honourable High Court has reiterated its stand in ***Agia Ram case*** and the Honourable Supreme Court has upheld the verdict in ***U.O.I vs Darshan Lal Bali and others*** reported in CC No. (S) 22402/2015. Further, as per para 4.12 of annexure to Govt's Resolution dt. 29.8.2008 and para 4.2 of G.O.I, Office Memorandum dt.1.9.2008:

“ 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 pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired -- ”

The Serial Circular No.110/2008, dt.12.9.2008 of the Respondents submitted by the applicant along with MA 204/2018 states that:

“ In all other categories/ cadres except where otherwise subsequently by Ministry of Railways (Railway Board) the posts in the existing scales of Rs.5000-8000, Rs.5500-9000 will stand merged –Grade pay of Rs 4200 in Pay Band 2 along with functions, Rationalization of functions as also revised designations, AVC, Recruitment rules classification, selection/ non selection etc. will be issued by Railway Board through separate orders”

7. Therefore by the said Serial Circular No. 110/2008 the scales in question have been merged. The equivalent scale in 6th CPC is Rs.9300-34,800 with Grade pay of Rs.4200. Applying clauses stated at para 4.12 of annexure to Govt's Resolution dt 29.8.2008 and also at para 4.2 of G.O.I, Office Memorandum dt. 1.9.2008, the minimum of the pay scale/level, reckoning the scale of Rs.5500-9000, would be Rs.14,430 in the pay band of Rs 9300-34,800. The pension has to be fifty percent of Rs.14,430 which is Rs.7215. Therefore in view of the instructions on the subject and the aforesaid discussions elaborated at paras supra the claim of the applicant is to allowed. The OA succeeds.

8. As a consequence the Respondents are directed to consider as under:

- i) To re-fix the pension of the applicant at Rs 7215 w.e.f . 1.1.2006 and regulate it accordingly.
- ii) Work out and release the arrears of pension for a period of only 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. Tarsem Singh.
- ii) Time allowed to implement the order is 5 months from the date of receipt of this order.

9. In the result, the OA is allowed with the above directions. There shall be no order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 11th day of December, 2018

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