

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

Original Application No.20/854/2015

Reserved on: 19.11.2018

Order pronounced on: 11.12.2018

Between:

1. Ch. Veeranjaneyulu, S/o. late Ramaiah,
Aged about 72 years, Occ: OS, Gr. II Retd.,
Senior Divisional Personnel Office,
SC Railway, Vijayawada, R/o. Vijayawada.
2. K. Srinivasan, S/o. late Krishna Murthy,
Aged about 76 years, Occ: OS, Gr. I Retd.,
Senior Divisional Operations Managers Office,
SC Railway, Vijayawada, R/o. Vijayawada.
3. Y.V.M.V. Shekhra Rao, S/o. late Seetaramaiah,
Aged about 71 years, Occ: OS, Gr. II Retd.,
O/o. Senior Divisional Commercial Officer,
SC Railway, Vijayawada, R/o. Vijayawada.
4. Ch. Ramalingeshwara Rao, S/o. late Laxmi Narayana,
Aged about 76 years, Occ: OS, Gr. II Retd.,
O/o. Divisional Mechanical Engineer/ Diesel,
SC Railway, Vijayawada, R/o. Vijayawada.
5. M.P. Punnaiah, S/o. late Raghavaiah,
Aged about 72 years, Occ: Head Clerk, Retd.,
O/o. Senior Divisional Commercial Officer,
SC Railway, Vijayawada, R/o. Vijayawada.
6. M. Sree Rama Chandra Murthy, S/o. late Kondeswara Rao,
Aged about 72 years, Occ: Head Clerk, Retd. (CR Cell),
O/o. Divisional Railway Manager,
SC Railway, Vijayawada, R/o. Vijayawada.
7. R. Koteshwara Rao, S/o. late Kondaiah,
Aged about 78 years, Occ: Retd. Office Superintendent Gr. I,
Senior Divisional Personnel Office,
SC Railway, Vijayawada, R/o. Vijayawada.
8. Mrs. J.M. Samuel, W/o. late Samuel,
Aged about 79 years, Occ: Retd. Matron, RH/ BZA,
SC Railway/BZA, R/o. Vijayawada.
9. G. Ranga Charyulu, S/o. late Raja Gopala Chary,
Aged about 72 years, Occ: Retd. Head Clerk,

O/o. Senior Divisional Engineer,
SC Railway, Vijayawada, R/o. Vijayawada.

10. Mrs. P. Varahalu, W/o. late G. Subba Rao,
Aged about 76 years, Occ: Retd. Matron,
O/o. Chief Medical Superintendent,
SC Railway, Vijayawada, R/o. Vijayawada.
11. Mohammed Rasheed Ahmed, S/o. late Riyazuddin,
Aged about 76 years, Occ: OS, Gr. I Retd.,
O/o. Divisional Mechanical Engineer/ Diesel,
SC Railway, Vijayawada, R/o. Vijayawada.
12. B.A.G. Sarojini, W/o. M.C. John,
Aged about 73 years, Occ: TGT/RMHS (TM)
SC Railway, Vijayawada, R/o. Vijayawada.
13. N. Padmanabha Rao, S/o. Ramaiah,
Aged about 70 years, Occ: CTPO,
O/o. Senior DSTE South Central Railway,
Vijayawada, R/o. 7-C-9, Srinivas Place,
Plot No. 405, Kamala Nagar (South),
ECIL (PO), Hyderabad – 62.

...Applicants

And

1. Union of India, Rep. by its General Manager,
South Central Railway, Rail Nilayam, Secunderabad.
2. Union of India, Rep. by the Principal Secretary,
Ministry of Personnel, Public Grievances & Pensions,
D/o. Pensions, Pensioners Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.
3. The Senior Divisional Personnel Officer,
SC Railway, Vijayawada.
4. The Senior Divisional Finance Manager,
SC Railway, Vijayawada.
5. The Additional Divisional Railway Manager,
SC Railway, Vijayawada.

...Respondents

Counsel for the Applicants ... Mr.P.S. Ramachandra Murthy

Counsel for the Respondents ... Mrs. Syama Sundari, SC for Railways
Mrs. K. Rajitha, Sr.CGSC for R-2

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 for non implementation of the recommendations of the 6th Pay Commission in respect of the applicants despite the orders of the Honourable Principal Bench of this Tribunal in OAs 655/2010, 3079/2009, 306/2010 and 507/210 on the issue and which has attained finality.

2. Brief facts of the case are that the applicants were working as Office Superintendents/Head Clerks /Matron and retired from service between the years 1997 and 2005. The applicants, being pre 2006 retirees, have pleaded on different dates for implementation of the recommendations of the 6th Pay Commission as per the Government Resolution dated 29.8.2008 and as per various judicial pronouncements, but was not considered. Hence the OA.

3. The contention of the applicants is that similarly situated pensioners when they approached the Honourable Principal Bench of this Tribunal in OAs 3079/2009 & 306/2010 they were allowed with a direction to refix the pension of pre 2006 retirees w.e.f 1.1.2006. The matter was carried to the Honourable High Court of Delhi by the Respondents and on being dismissed they took it forward to the Honourable Supreme Court in SLP (Civil) No 23055 of 2013, where they met the same fate. Even reviews and curative petitions filed by the G.O.I on the issue were dismissed by the Honourable Supreme Court. Then the applicants approached this tribunal in OA

20/268/2014 which directed Respondents to dispose of the representations of the applicants but since it was not acted upon by the Respondents, the applicants then gave a legal notice on 23.5.2014 for non compliance of the orders of the tribunal but this did not evoke a response. Similar was the outcome when they represented to the Principal Secretary, Ministry of Personnel, Public Grievances, Pensioners Welfare; Chairman Railway Board; and Personnel Officers of Secunderabad/Vijayawada division of South Central Railway. The applicants contend that it is mandatory to fix their pension as per para 5.1.47 of the Government notification referred to.

4. The Respondents contest stating that as per Railway Board instructions vide RBE 105/08 the pension has to be fixed w.e.f. 1.1.2006. The Respondents claim that they have worked out the pension based on the concordance table issued by the DOP & PW (Dept. of Pension & Pensioners Welfare) lr dt 28.1.2013 for pre 2006 retirees. The multiplication factor of 1.86 is only for those who are on the rolls as on 1.1.2006 but not to retired employees. Pensions are fixed based on relevant instructions and not based on representations.

5. Heard the counsel and perused the documents. Both the counsel argued in tandem with the written submissions made by them.

6. The issue is about the eligibility of the pre -2006 retirees being extended pension benefits w.e.f 1.1.2006. The case has been adjudicated in depth by the Honourable Principal Bench of this Tribunal in OA 655/2010 & batch which has attained finality after the Honourable Supreme Court has upheld the same.

The respondents did accept and worked out the details based on the concordance table issued by the DOP & PW (Dept. of Pension & Pensioners' Welfare) lr dt 28.1.2013 for pre 2006 retirees about which the applicants are aggrieved in regard to the mode of calculation. Before we comment on the same, we would like to highlight the essence of the order of the Honourable Principal Bench which reads as under:

“In view of what has been stated above, we are of the view that the clarificatory OM dt 3.10.2008 and further OM dt 14.10.2008 (which is also based upon clarificatory OM dt 3.10.2008) and OM dt 11.2.2009, where by representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to refix the pension of all pre -2006 retirees w.e.f. 1.1.2006 based on the resolution dt 29.8.2008 in the light of our observations made above.”

The important proviso of the judgment is a direction given to implement as per Government resolution dt 29.8.2008 by quashing O.Ms which were distorting the key provisions of fixing pension given hereunder:

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.”

Thus the essence is to follow the provisions of the 29.8.2008 notifications namely to fix pension based on last 10 months emoluments or 50% of last pay drawn whichever is beneficial and ensuring 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.

The issue having attained finality in the Apex Court, Ministry of Finance, G.O.I has issued many instructions consequent to the judgment and the one pertinent to the issue in question is the DOP&PW lr dt 30.7.2015 circulated vide RBE no 86/2015 (Annexure A-5). The Board order referred to, quoting the said judgment has, ordered revision of pension of pre -2006 pensioners. Respondents need to refix the pension based on the latest orders of the Railway Board of 2015 and not those issued in 2013. There has been lot of churning which took place after the said judgment in regard to revision of the pension of the pre 2006 pensioners, resulting in issue of quiet a few O.Ms. The Respondents need to be alert and apply the latest relevant order which is RBE 86/2015. By following the latest order, the dispute between the applicants and the Respondents gets resolved. It is surprising to note that the Respondents are not implementing their own orders/rules. It is not out of place to adduce that the Honourable Supreme Court has made serious observations in regard to the need to follow rules. The observations are as under:

The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “*Action in respect of matters covered by rules should be regulated by rules*”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “*the court cannot de hors rules*”

The Respondents are advised to note and act as per directions of Honourable Supreme Court.

The issue of revising pension of pre-2006 pensioners is fully covered by the cited Judgment of the Honourable Principal Bench and the same having attained finality, we respectfully abide by the said verdict in consonance with the Honourable Supreme Court judgment in *Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644.*

7. Therefore based on facts and settled legal principle in regard to the issue, the OA succeeds. The Respondents are therefore directed to consider:

- i) To revise the pension of the applicants w.e.f 1.1.2006 as per Railway Board order RBE 86/2015 dt 31.7.2015 based on the concordance table appended to the cited Railway Board order.
- 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. Tarsem Singh.
- iii) Time calendared to comply with the order is 7 months from the date of receipt of this order

8. 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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