

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

Original Application No. 1274 of 2013

Date of CAV: 24.01.2019

Date of Pronouncement: 22.02.2019

Between:

T.A. Krishna Prasad,
Deputy C.M.E.- Safety (Retd.)
Flat No. 402, D-Block, Sri Keerthi Towers,
Lalapet, Secunderabad – 500 017.

... Applicant

And

1. Union of India, Rep. by its Secretary
Ministry of Railways (Rail Mantralaya),
Railway Board, New Delhi.
2. The Financial Advisor and Chief Accounts Officer,
South Central Railway, Railway Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Railway Nilayam, Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. K. Satyanarayana Rao
Counsel for the Respondents	...	Mrs.A.P. Lakshmi, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

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 validity of the PPO dt 8.1.2009 issued by the respondents.

3. The applicant retired from the respondents organisation on 31.5.2004 in the pay scale of Rs.14300-18300 with the last pay drawn as Rs.15,900 and the average emoluments of Rs.23,310. Pension granted was Rs.23,050. As per the 6th CPC recommendations the applicant should have been granted Rs.24,195/-

taking last pay drawn as Rs.15,900 or Rs.23,673 based on the last 10 months average emoluments.

4. The contentions of the applicant are that the G.O.I. resolution dt 29.8.2008, CCS (Revised Pay) Rules 2008 support his plea. As per 6th CPC, pensioners who retire before 1.1.2006 in the scale of Rs.14300-18300, will draw pension irrespective of the basic pay drawn in the entire range of the pay scale. This is an anomaly. The anomaly arose because the 6th CPC originally recommended pay scale of Rs.15,600-39100 for the pre-revised scale of Rs.14,300-18,300 but Govt. has enhanced it to Rs.37,400-67000 with a Grade Pay of Rs 8700 in PB-4 scale grouping. The pension rules being one and the same for the pre and post 2006 retirees, there should not be any difference when pension is worked out in respect of those drawing higher basic pay for those belonging to the two groups. Pension of pensioners in higher basic pay has to be fixed basing only on appropriate fixation tables and grade pay and not otherwise. The applicant quoted Honourable Supreme Court judgments in D.S.Nakara Vs. UOI, P.Chellapan v State of Tamil Nadu, and Hon'ble Principal Bench verdict in OA 655/2010 in support of his contentions. The applicant has represented on 6.3.2013, 6.8.2013 to refix the pension. As it was not refixed the OA has been filed.

5. Respondents state that the applicant after retiring on 31.5.2004 in the pay scale of Rs.14300-18,300 in 5th CPC scale was granted pension of Rs.11,655 w.e.f 1.6.2004. On acceptance of 6th CPC recommendations, Railway Service (Revised pay) Rules 2008 dt 6.9.2008 were issued for refixing of pay of employees working as on 1.1.2006. In regard to fixation of pension to pre 2006 retirees separate instructions were issued vide letter dt 8.9.2008. Accordingly, the pension of the applicant was fixed as Rs.23,050 w.e.f 1.1.2006 and his

representation was disposed on 20.12.2013. The applicant is seeking re-fixation of pay instead of pension and therefore, the difference. The principle of considering 50% of last pay drawn is only applicable to only those who retired on or after 1.1.2006. The applicant is relying on fitment tables for employees in service. The revised pay rules dt 29.8.2008 which the applicant is quoting are not applicable to a retired employee. The applicant is challenging the refixation done and not the orders issued to work out such refixation.

6. Heard both the counsel. Sri K. Satyanarayana Rao appeared on behalf of the applicant and Smt. A.P. Lakshmi, learned Standing Counsel represented the respondents. We have gone through the documents and the material papers submitted.

7(i) The applicant argument is to refix the pension by working out the last 10 months pay in 5th CPC and the quantum of pension so arrived shall be brought to 6th CPC as per fitment table and reckon once again the last 10 months pay in 6th CPC to fix pension.

Pre-revised Pay Basic Pay	Revised Pay		
	Pay in Pay Band	Grade pay	Revised basic Pay
15,900	39,690	8700	48390

The submission of the applicant that as per 6th CPC , pension shall be 50% of last pay drawn. Hence 50 percent of Rs.48,390 is Rs.24,195, which he claims, has to be paid.

ii) Against the claim of the applicant, a closer look of the 6th CPC recommendation accepted by the Government is warranted as they form the key to the resolution of issue on hand. Relevant observations are as under:

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”

iii) The concordance table (CT) attached to the O.M dt 1.9.2008 dealing with pre 2006 retirees, provides the pension to be fixed as on 1.1.2006. Corresponding instructions of the Railway Board are contained in F(E) III /2008/PN1/12 dt 8.9.2008. Accordingly the revised consolidated pension (RCP) due is worked out and given hereunder:

S. No.	Pay scale/ last pay drawn	Pension drawn by respon- dents	Date of retirement	Pension sought by the applicant	Pension vide OMs.dt 29.8.2008/ 1.9.2008- w.r.t concordance table (C.T) revised consolidated pension (RCP)	50 percent of the minimum of pay band and grade pay corresponding to the pay scale in which pensioner retired
1	14,300- 18300 5 th CPC/ 15,900	11,655	31.5.2004	23,673/ 24,195	15,900/2= 7950—As per C.T RCP = 17,967	23,050

iv) The pension fixed by the respondents is Rs 23,050. The applicant is seeking revision of pension after revising of his pay which is incorrect. The pensioner can ask for revision of pension and not revision of pay after retirement. Based on the acceptance of the 6th CPC different tables have been worked out for the pre 2006 pensioners and the post 2006 pensioners. As the pay of the post 2006 pensioners has been revised based on 6th CPC recommendation, their pension will be different. In contrast, pre 2006 pensioners pension is re-fixed based on 6th CPC recommendation and not their pay. The respondents stating that 50 percent of the last pay drawn cannot be taken to re-fix pension is not correct as it is against the recommendation of the 6th CPC. Taking the last pay drawn of Rs15,900/- the pension has to be re-fixed as shown in the above table. Even after doing so, pension eligible to be drawn is Rs 23,050.

v) The Honourable Principal and Eranakulam Benches of this Tribunal and the Honourable High Courts of Punjab and Haryana and New Delhi, in the cases cited by the applicant, have ordered that the pension has to be re-fixed as per the recommendations of the 6th CPC. OM's like 3.10.2008, 14.10.2008 etc. issued subsequently modifying some provisions contained in the original OM 1.9.2008 were discussed in the cited judgments and held to be invalid. The other judgment of the Honourable Supreme Court quoted by the applicant in P.Chellappan vs. State of Tamil Nadu is not relevant to the question in issue. The respondents have re-fixed the pension based on the OM dt. 1.9.2008 and which is in concurrence with the judgments cited. The pension of the applicant has been correctly re-fixed as per the 6th CPC recommendations w.e.f. 1.1.2006 and hence in tune with D.S. Nakara judgment quoted by the applicant. The applicant questioning the recommendations of the 6th CPC, an expert body having all the wherewithal to deal with matters of pay does not hold water

in view of the Honourable Supreme Court observation in ***State Bank of India & Others Vs. K.P. Subbaiah & Others***, reported in ***2004 SCC (L&S) 149***, where in it was held that :

“20. The fixation of pay scales is essentially a function of the executive. They are closely interlinked with evaluation of duties and responsibilities attached to the posts and the pay scales are normally linked with conclusions arrived at by expert bodies like the Pay Commission.”

Further, in ***Indian Drugs & Pharmaceuticals Ltd Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd***, reported in ***2007 (1) SCC 408***, Hon’ble Apex Court observed that,

“40. The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on theses posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case...”

vi) The Govt . has accepted the 6th CPC recommendations and the matter has attained finality after the Honourable Supreme Court has confirmed the verdict of the Principal Bench dt 1.11.2011 in Union of India Vs. K. Venugopalan Nair in C.C. No(s). 2001-2002/2015 wherein it was observed that “The provisions of quashed OM’s dt. 3.10.2008, 14.10.2008, 11.2.2009 can never be revoked. Pension of all pre-2006 pensioners need to be refixed w.e.f. 1.1.2006 based on accepted recommendation of 6th CPC notified through resolution dated 29.8.2008, in accordance with CAT Principal Bench Delhi judgment dt. 1.11.2011 that attained legal finality by the highest court of the land.” The Govt. of India, based on the notification dt. 29.8.2008, accepting 6th CPC recommendation, has issued OM 1.9.2008 detailing the procedure along with the concordance tables to re-fix pension. Respondents issued

corresponding orders based on 1.9.2008 and the pension was accordingly worked out so that it is not less than the minimum of the pay band and the grade pay corresponding to the scale in which the applicant retired.

vii) Therefore, based on the above , we find no reason to intervene on behalf of the applicant hence the OA is dismissed with no order to costs.

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

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 22nd day of February, 2019

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