

**Central Administrative Tribunal
Principal Bench**

OA No. 4015/2016

Order reserved on: 17.01.2019
Order pronounced on: 13.02.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Harish Chander Sharma,
Age 74 years,
S/o Sh. Jai Narain,
Retired Sr. Physical Education Teacher,
Govt. of NCT of Delhi,
r/o Vill. Chandu, PO Budhera,
Distt. Gurgaon (Haryana)-122001.

... Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. Govt. of NCT of Delhi
Through
The Chief Secretary,
New Secretariat, New Delhi.
2. The Director of Education
Govt. of NCT of Delhi
Old Secretariat, Delhi.
3. The Chief Controller of Accounts,
Govt. of NCT of Delhi
ADM A-Block,
Near ITO Vikash Bhawan,
New Delhi.
4. The Pay & Accounts Officer,
Central Pension Accounting Office,
Govt. of India, Trikoot-2,
Bhikaji Cama Place,
New Delhi-66.

... Respondents

(By Advocate: Ms. Purnima Maheshwari)

ORDER

The applicant was initially appointed as Senior Physical Education Teacher (Sr. PET) on 05.02.1973 and superannuated on completion of 60 years of age on 28.02.2002 after rendering 29 years and 24 days of service. During the period IV Central Pay Commission (CPC) was applicable (w.e.f. 01.01.1986 to 31.12.1995), the pay scale for the post of Sr.PET was Rs.1400-2600 and on completion of 12 years of service, ACP was granted to the applicant to the scale of Rs.1640-2900.

The applicant pleads that on implementation of V CPC w.e.f. 01.01.1996, the pay scale of the post of Sr. PET was revised to Rs.5500-9000 and that of the senior scale for the post of Sr. PET was revised to Rs.6500-10500. He was already promoted to senior scale. Accordingly, at the time of his retirement, the basic pay of applicant was Rs.10100/- in the pay scale of Rs.6500-10500.

2. The corresponding pay scales in V CPC (w.e.f. 01.01.1996 to 31.12.2005) and 6th CPC (1.1.2006 to 31.12.2016) were as under:

S.No.	IV CPC w.e.f. 1.1.1986	V CPC w.e.f. 1.1.1996	VI CPC w.e.f. 1.1.2006
1.	Rs.1400-2600	Rs.5000-8000	These two scales were merged into PB-2 Rs.9300-34800 plus GP Rs.4200
2.	Rs.1640-2900	Rs.5500-9000	
3.	Rs.2000-3500	Rs.6500-10500	This scale along with the two above scales were initially merged into PB-2 + GP Rs.4200/-. However, vide Ministry of Finance OM dated 13.11.2009, it was subsequently given PB-2 plus GP Rs.4600/-.
4.		Rs.7450-11500	PB-2 Rs.9300-34800 plus GP Rs.4600.
5.		Rs.7500-12000	PB-2 Rs.9300-34800 plus GP Rs.4800

3. Further, when VI CPC recommendations were implemented, a Gazette notification was issued on 29.08.2008 wherein following provisions were made:

“(ii) On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these Pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being graded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.”

The relevant Section II of Part-B of this notification dated 29.08.2008 had made the following provision in respect of teachers:

(In Rupees)

Sl. No.	Post	Present Scale	Revised Pay Scale	Corresponding Pay Band & Grade Pay		Para No. of the Report
				Pay Band	Grade Pay	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
XVII	TEACHERS					
1	Primary School Teacher	Grade III 4500-7000 Grade-II 5500-9000 Grade I 6500-10500	Grade III 6500-10500 Grade II 7450-11500 Grade I 7500-12000	PB-2 PB-2 PB-2	4200 4600 4800	
2	Trained Graduate	Grade-III 5500-9000 Grade II 6500-10500 Grade I 7500-12000	Grade II 7450-11500 Grade I 7500-12000 Grade I 8000-13500	PB-2 PB-2 PB-2	4600 4800 5400	3.8.22

This indicates that the Trained Graduate Teachers, who were in the scale of Rs.6500-10500 and were still in service as of 01.01.2006, were given the upgraded scale of Rs.7500-12000 and thereafter fixed in the VI CPC in PB-2 + GP Rs.4800.

The applicant pleads that on implementation of 6th CPC, the TGT in scale of Rs.6500-10500 were upgraded to Rs.7500-12000 and were granted PB-2 plus GP Rs.4800 as per notification dated 29.08.2008. Accordingly, one Shri Hare Kishan Lal who retired as TGT in the year 2001 from scale

Rs.6500-10500, was granted the pension corresponding to PB-2 plus GP Rs.4800 vide PPO No.696740100485 dated 27.06.2016. It was further pleaded that Sr. PET and TGT are equivalent and accordingly applicant also needs to be granted PB-2 plus GP Rs.4800 w.e.f. 1.1.2006 and pension revised accordingly.

However, when the Pension Pay Order (PPO) of the applicant was revised vide orders dated 06.07.2006, he was fixed in the pay scale of PB-2 + GP Rs.4200 only.

4. Further, the applicant pleads that his revised pension was reduced reckoning his qualifying service to be 29 years and 24 days whereas in accordance with the Department of Pension & Pensioners' Welfare (DOP&PW) OM dated 06.04.2016, the distinction of minimum qualifying service being 33 years for pre-01.01.2006 pensioners and 20 years for post-01.01.2006 pensioners, was removed and the minimum qualifying service for all pensioners was brought at par and was to be reckoned as minimum qualifying service of 20 years. The relevant part of this OM is reproduced below:

“6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) 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. Accordingly, Para 5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006.”

Accordingly, applicant pleads for grant of full pension w.e.f. 1.1.2006, as he had served for more than the minimum qualifying period of 20 years. Correction is needed on this account also.

5. The third grievance of the applicant is that the above revisions to pension w.e.f. 1.1.2006, will have repercussion on his pension under VII CPC also, which has taken effect from 01.01.2016 onwards. This also needs correction.

6. The applicant pleads that he had been making several representations dated 11.05.2016, 30.05.2016, 01.06.2016 and 02.06.2016, however, no action was taken and hence the grievance has been ventilated in the instant OA. The applicant sought following reliefs:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned revised PPO dt. 6.7.2016 in respect of fixing the pension of the applicant (Annex.A/1), declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to fix the pension of the applicant on notional fixation of pay in Grade Pay of Rs.4800/- in PB-II w.e.f. 1.1.2006 and as per OM dated 6.4.2016 with all the consequential benefits including arrears of difference of pension with interest.

(ii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant.”

7. The respondents pleaded that the applicant had already retired before VI CPC recommendations were implemented w.e.f. 01.01.2006 and since he had superannuated from the pay scale of Rs.6500-10500, he was given the replacement pay scale of PB-2 + GP Rs.4200 as was notified vide Department of Expenditure, Ministry of Finance OM dated 30.08.2008 (Table S-12 thereof) and thereafter in 7th CPC vide Table No.24 of relevant notification. With this, the revised PPO was issued on 06.07.2016. This takes into account the OM issued by DoP&PW vide OM dated 06.04.2016, which was to remove the distinction of pre and post 1.1.2006 pensioners with respect to minimum qualifying service. This table, S-12, used for such revision of pension in respect of pay scale of Rs.6500-10500 (for the period 01.01.1996 to 31.12.2005), corresponds to Rs.9300-34800 with GP Rs.4200. The respondents pleaded that this pay fixation and revision of pension has been correctly done and the OA has been opposed.

The respondents mentioned that instructions for pension as per 7th CPC, were issued vide DoP&PW OM dated 6.7.2017 and table 24 thereof pertains to Rs.6500-10500 (pre-revised) which corresponds to PB-2 GP Rs.4200 as per 6th CPC. Further, it corresponds to Level-6 Rs.35,400-

1,12,400) as per 7th CPC. Pension has been revised accordingly and is correct.

8. The applicant relied upon a judgment by Hon'ble Apex Court in **V.Kasturi vs. Managing Director, State Bank of India, Bombay and another**, (1998) 8 SCC 30 and an order of this Tribunal in **Ramesh Chandra Gupta vs. Union of India and others**, OA No.407/2017 decided on 04.12.2017.

9. Matter has been heard at length. Sh. Yogesh Sharma, learned counsel pleaded for applicant and Ms. Purnima Maheshwari, learned counsel pleaded for respondents.

10. The applicant had already been promoted to the scale of Rs.1640-2900 as per IV CPC which corresponds to Rs.5500-9000 as per V CPC. Thereafter, applicant was promoted to Rs.6500-10,500 and he superannuated from this scale on 28.02.2002.

It is noted that initially the three pre-revised scales, viz. Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were all merged into PB-2 GP Rs.4200/- (para 2.0 supra). His pension was fixed accordingly.

10. The contention of applicant that he needs to be treated at par with the TGTs who were in pre-revised Rs.6500-10500 and who were still in service as on 1.1.2006 and who were given PB-2 plus GP Rs.4800, cannot be accepted as he had

already retired on 28.02.2002, before this upgradation came into force. Applicant is unable to provide any policy directives in this regard. Accordingly, contentions to this effect are not accepted.

11. It is noted that DOP&PW have now issued an OM dated 04.01.2019, on the subject of pension w.e.f. 01.01.2006 for those pensioners who retired prior to this date and were in 5th CPC scale Rs.6500-10500 at that time. The relevant parts of this OM read as under:

“5. Representations have been received in this Department for extending the benefit of grade pay of Rs. 4600/- for revision of pension/family pension, w.e.f. 1.1.2006, in respect of Pre-2006 pensioners who retired/died in the 5th CPC scale of Rs. 6500-10500/- or equivalent pay scale in the earlier Pay Commission periods. The matter regarding the amount of minimum pension/family pension in terms of para 4.2 of the O.M. dated 1.9.2008 in their case has been re-examined in the light of the orders issued by Ministry of Finance (Department of Expenditure) vide their OM No. 1/1/08-IC dated 13.11.2009 and decisions of courts in certain cases. It has been observed that pay of all serving employees in the pre-revised pay scale of Rs. 6500-10500/- has been fixed w.e.f. 1.2006 in the grade pay of Rs. 4600/- . Therefore, the grade pay of Rs. 4600/- can be considered as the grade pay corresponding to the pre-revised pay scale of Rs. 6500-10500/-.

6. Accordingly, it has been decided that, for the purpose of revision of pension/family pension e.f. 1.1.2006 under para 4.2 of the O.M. dated 1.9.2008, the Grade Pay of Rs. 4600/- may be considered as the corresponding Grade pay in the case of pre-2006 pensioners who retired/died in the 5th CPC scale of Rs. 6500-105001- or equivalent pay scale in the earlier Pay Commission periods,

7. In accordance with the provisions of Rule 7 of the CCS (Revised Pay) Rules, 2008, the pay corresponding to the pay of Rs. 6500/- in the pre-revised pay scale of Rs. 6500-10500/- would be 12090/- in the PB-2. After adding the grade pay of Rs. 4600/- , the pay in the Pay Band I Grade Pay corresponding to the pay of Rs. 6500/- in the pre-revised pay scale of Rs. 6500-10500 would be Rs. 16690/-

(12090+4600). Accordingly, the revised pension w.e.f. 1.1.2006 in terms of para 4.2 of OM dated 1.9.2008, for the pre-2006 pensioners who retired from the pay scale of Rs. 6500-10500/- in the 5th CPC or equivalent pay scales in the earlier Pay Commissions would be Rs. 8345/, Accordingly the entries at serial number 13 in the annexure of this Department's OM No. 38/37/08-P&PW(A) dated 28.1.2013 may be substituted by the entries shown in the statement annexed to this O.M.

8. As provided in this Department's OM dated 28.1.2013, in case the consolidated pension/family pension calculated as per para 4.1 of this Department's OM No. 38/37/08- P&PW(A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

12. Further, with issuance of DOP&PW OM dated 06.04.2016 the pension, of pre-01.01.2006 pensioners, was to be revised keeping the minimum qualifying service for full pension as 20 years and accordingly, the pension was to be revised, subject to a minimum of 50% of the corresponding minimum of the new pay band + GP corresponding to the pre-revised pay scale from which the pensioner had retired. This needs to be worked out and implemented as per fixation allowed vide DOP&PW OM dated 04.01.2019 and corrections carried out as necessary.

13. In view of the foregoing, the respondents are directed to revise the PPO in respect of the applicant w.e.f. 01.01.2006, revising his corresponding pay in the pay scale of PB-2 + GP Rs.4600 and grant him full pension as he had completed more than 20 years of the minimum requisite qualifying

service as per DOP&PW OM dated 04.01.2019. With this, the PPO for VII CPC shall also need to be revised with all consequential benefits. Accordingly, all arrears shall also be worked out and paid. These arrears will not carry any interest as these are primarily necessitated due to DOP&PW OM dated 04.01.2019.

The above exercise shall be completed within a period of eight weeks of receipt of a certified copy of this order.

14. This OA is partly allowed as above. No order as to costs.

(Pradeep Kumar)
Member (A)

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