

**Central Administrative Tribunal  
Principal Bench**

OA No. 4138/2017

Order reserved on: 07.02.2019  
Order pronounced on: 20.02.2019

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

Mahender Singh Dabas  
Aged 77 years, Principal Group 'A'  
S/o late Sh. Hari Singh,  
R/o Village Rasul Pur,  
Delhi-110081.

... Applicant

(By Advocate: Sh. Bani Singh)

Versus

The Director of Education,  
Govt. of N.C.T. of Delhi,  
Old Secretariat,  
Civil lines,  
Delhi-110054.

... Respondents

(By Advocate: Ms. Deepika)

**ORDER**

The applicant herein had served as Principal in a school under Government of National Capital Territory of Delhi (GNCTD) and he superannuated on 31.12.2000 after completing 32 years of service. At the time of superannuation he was in the pay scale of Rs.10,000-15,200 as per 5<sup>th</sup> Central Pay Commission (CPC). His average pay was

determined as Rs.13,380 p.m. and the pension was fixed accordingly. On implementation of 6<sup>th</sup> CPC recommendations which were adopted by GNCTD, the corresponding scale w.e.f. 01.01.2006 was Rs.15,600-39,100 + Grade Pay (GP) Rs.6600. Accordingly, he was fixed in this scale and the pension was revised to Rs.14,664 w.e.f. 01.01.2006 vide orders dated 28.06.2017.

2. The applicant pleads that with implementation of 6<sup>th</sup> CPC, the post of Principal was upgraded from Rs.10,000-15,200 to Rs.12,000-16,500 which corresponds to Rs.15,600-39,100 + GP Rs.7600 in 6<sup>th</sup> CPC. The applicant pleads that he ought to have been fixed in this GP of Rs.7600 and not in GP Rs.6600.

He made a representation for this correction and when he did not receive any reply, a legal notice dated 31.05.2017 was sent, in response to which the revised PPO was issued dated 28.06.2017 wherein he was fixed in GP Rs.6600, as already mentioned above. The applicant feeling aggrieved on account of non-fixation in GP Rs.7600 has preferred the instant OA.

3. The applicant has relied upon the judgment by the Tribunal in OA No.655/2010 decided on 01.11.2011. This

judgment by the Tribunal had attained finality after the challenge to the same was dismissed by Hon'ble Apex Court.

4. The applicant has also relied upon a judgment dated 03.08.2018 in OA No.2943/2017 (**J.D.Gupta vs. GNCTD**). In this case Sh. J.D.Gupta was working as a Principal and he retired in the year 1992 in the scale of Rs.3000-4500 (4<sup>th</sup> CPC). This scale was revised to Rs.10,000-15,200 as per 5<sup>th</sup> CPC and in turn Rs.15,600-39,100 + GP Rs.6600 as per 6<sup>th</sup> CPC. The Principals under GNCTD were upgraded to the pay scale of Rs.12,000-16,500 by the 6<sup>th</sup> CPC which corresponded to Rs.15,600-39,100 + GP Rs.7600. This was not agreed by the respondents and feeling aggrieved he had approached the Tribunal. The Tribunal relied upon the judgment by the Tribunal in OA No.655/2010 delivered on 01.11.2011, and this OA was allowed.

5. The applicant also pleads that in the wake of the decision by the Tribunal in OA No.655/2010 which attained finality, the Department of Pension & Pensioners' Welfare (DOP&PW) have issued an OM dated 06.04.2016 which reads as under:

"The undersigned is directed to say that as per Para 4.2 of this Department's OM of even number dated 1.9.2008 relating to revision of pension of pre-2006 pensioners w.e.f. 1.1.2006, the revised pension w.e.f. 1.1.2006, in no case, shall be lower than 50% of the sum of the minimum of pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had

retired. A clarification was issued vide DoP&PW OM of even number dated 3.10.2008 that the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale.

2. Several petitions were filed in the Central Administrative Tribunal, Principal Bench, New Delhi inter alia claiming that the revised pension of the pre-2006 pensioners should not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which pensioner had retired, as arrived at with reference to the fitment tables annexed to Ministry of Finance, Department of Expenditure OM No. 1/1/2008-IC dated 30th August, 2008. Hon'ble CAT, Principal Bench, New Delhi vide its common order dated 1.11.2011 in OA No.655/2010 and three other connected OAs directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006 based on the Resolution dated 29.8.2008 of the Department of Pension & Pensioners' Welfare and in the light of the observations of Hon'ble CAT in that order.

3. Orders were issued vide this Department's OM of even number dated 28.1.2013 for stepping up of pension of pre-2006 pensioners w.e.f. 24.9.2012 to 50% of the minimum of pay in the pay band and grade pay corresponding to pre-revised pay scale from which the pensioner retired. Para 5 of this OM provides that in case the consolidated pension/family pension calculated as per para 4.1 of O.M. No.38/37/08- P&PW (A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated in the O.M. dated 28.1.2013, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

4. Subsequently, in compliance of the order dated 1.11.2011 of the Hon'ble CAT, Principal Bench in OA No. 655/2010, order dated 29.4.2013 of Hon'ble High Court of Delhi in WP (C) No. 1535/2012 and order dated 17.3.2015 of Hon'ble Supreme Court in SLP (C) No. 36148/2013, order were issued vide this Department's OM of even number dated 30.7.2015 that the pension/family pension of all pre — 2006 pensioners/family pensioners may be revised in accordance with this Department's O.M. No.38/37/08-P&PW(A) dated 28.1.2013 with effect from 1.1.2006 instead of 24.9.2012.

5. In accordance with the order issued in implementation of the recommendation of the 6th CPC, the pension of Government servants retired/retiring on or after 1.1.2006 has been delinked from qualifying service of 33 years. In OA No. 715/2012 filed by Shri. M.O. Inasu, a pre-2006 pensioner, Hon'ble CAT, Ernakulam Bench, vide its order dated 16.8.2013 directed that the revised pension w.e.f. 1.1.2006 under para 4.2 of OM dated 1.9.2008 would not be reduced based on the qualifying service of less than

33 years. The appeals filed by Department of Revenue in the Hon'ble High Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CAT/High Court in several other cases also.

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."

6. In view of the foregoing, the applicant pleads that his pension is required to be revised in the scale of Rs.15,600-39,100 from GP Rs.6600 to GP Rs.7600 w.e.f. 01.01.2006.

7. The respondents opposed the OA. The respondents brought out as under in their averment:

"It is submitted that after implementation of the sixth pay commission the pay scale of the post of Principal was upgraded and was granted grade pay of Rs.7600 in PB-3. But the order was prospective in nature. Since the applicant retired before implementation of 6<sup>th</sup> pay Commission it is not applicable to the applicant."

8. The applicant submitted a rejoinder in which it was brought out that grievance relating to pension is a continuing cause of wrong. Further, applicant relied upon the decision in OA No.655/2010 and following reliefs were pressed:

"It is therefore most humbly prayed that the impugned order dated 28.06.2017 be declared as null and void and the respondent be directed to re-fix the pension of the applicant as per the upgraded scale of pay of principals as

per 6<sup>th</sup> pay commission with effect from 01.01.2006 and the respondent be further directed to pay the arrears along with interest at a rate of 12% per annum in the interest of justice.”

9. No interim relief was sought.

10. Matter has been heard at length. Facts in this case are not in doubt. Applicant had retired as Principal on 31.12.2000 while working in the scale of Rs.10,000-15,200. His pension was revised to corresponding scale of Rs.15,600-39,100 + GP Rs.6600 w.e.f. 01.01.2006 vide respondents letter dated 28.06.2017. Applicant pleads that instead he ought to have been fixed in GP Rs.7600. Reliance has been placed on OA No.655/2010 as well as on judgment in OA No.2943/2017.

11.0 It is seen that the judgment in OA No.2943/2017 has also relied upon the earlier judgment in OA No.655/2010. Accordingly, the salient features of OA No.655/2010 are required to be recapitulated.

The applicant brought out that in the wake of 6<sup>th</sup> CPC recommendations the Government had issued notification vide Ministry of Finance letter dated 30.08.2008 wherein no distinction was made between those who are in service and those who have since retired and a concordance table was also given from which it can be seen that the Principals who

were still in service as of 01.01.2006 were upgraded to the scale of Rs.12,000-16,500 and which corresponds to the 6<sup>th</sup> CPC scale of Rs.15,600-39,100 + GP Rs.7600.

Thus, the question is whether those who had already retired before 01.01.2006 can also be considered for upgradation at par with those who were still in service as of 01.01.2006.

In this connection, the background of OA No.655/2010 and the decision therein which had attained finality, was dealt with at length by this bench in OA No.3559/2017 and the judgment was pronounced on 16.10.2018. With this background, the question in OA No.655/2010 and decision making thereon is recapitulated as under:

11.1 The Department of Pension and Pensioners Welfare (DoP&PW) issued office memorandum dated 01.09.2008 indicating therein the method of fixation of pension for both, those who retired prior to 01.01.2006 as well as for those who retired post-01.01.2006. Particular attention was drawn to para 4.1 and 4.2 of this letter reproduced below:

“4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-

- i. The existing pension/family pension.
- ii. Dearness Pension, where applicable

- iii. Dearness Relief upto AICPI (IW) average index 536 (Base year 1982=100) i.e. @ 24% of Basic Pension/Basic family pension plus dearness pension as admissible vide this Department's O.M. No.42/2/2006-P&PW(G) dated 5.4.2006
- iv. Fitment weightage @ 40% of the existing pension/family pension.

Where the existing pension in (1) above includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006.

4.2 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 of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale."

These instructions were applicable to those who retired w.e.f. 02.09.2008 onwards.

11.2 Subsequently, a clarification was issued on 03.10.2008 by DoP&PW wherein para 4.2 of OM dated 01.09.2008 (para 11.1 supra) was clarified/modified as under:

"The pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400-67000 and the corresponding grade pay being Rs.10,000/- p.m. his minimum guaranteed pension would be 50% of Rs.37,400+Rs.10,000 (i.e. Rs.23,700). A statement indicating the minimum pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure.



The pension will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs.3500/- p.m.

In case the pension consolidated as per para 4.1 of OM.No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the pension calculated in the manner indicated above, the same (higher consolidated pension) will be treated as Basic Pension.

The fixation of family pension will be subject to the provision that the revised family pension, in no case, shall be lower than thirty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the pensioner/deceased Government servant had last worked. In case the family pension consolidated as per para 4.1 of OM No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the family pension calculated in the manner indicated above, the same (higher consolidated family pension) will be treated as Basic family Pension.”

It was pleaded in OA No.655/2010 that with this clarification, the original meaning and import of para 4.2 (para 11.1 supra) was unauthorizedly altered to cause adversity to pre 01.01.2006 pensioners.

11.3        Thereafter, another notification was issued by DoP&PW on 11.12.2008, wherein the instructions dated 01.09.2008 (para 11.1 supra) were made applicable to those who were retiring w.e.f. 01.01.2006 onwards in place of 02.09.2008 as was notified earlier (Para 11.1 supra).

11.4        The applicant in OA No.655/2010 had pleaded that with this, the method for calculation of pension in respect of those who retired w.e.f. 01.01.2006 were liberalised substantially with respect to the method for calculation of

pension for those who had retired prior to 01.01.2006. Basically this method of calculation of pension for pre 01.01.2006 and post 01.01.2006 was as under:

Pre 01.01.2006

Qualifying service was 33 years

Post 01.01.2006

Qualifying service was 20 years. Pension was to be fixed as per 50% of either last ten months average pay or last pay, whichever is higher.

11.5 Thus, it was alleged that two classes of pensioners got created, which tantamounts to discrimination of similarly placed persons and this was challenged in OA No.655/2010 in the Tribunal which was decided on 01.11.2011.

In their decision dated 01.11.2011 the Tribunal set aside the clarification issued on 03.10.2008 (para 11.2 supra) and alongwith this, two other letters of DoP&PW dated 14.10.2008 and 11.02.2009 were also set aside.

With this decision, the method of calculation of pension in respect of those who retired prior to 01.01.2006 was modified to be same as what was applicable for those who retired after 01.01.2006.

11.6 The decision of Tribunal (para 11.5 supra) was challenged by the respondents in Hon'ble High Court of Delhi in WP (C) no.1535/2012 and batch cases titled **Union of India & anr. vs. Central Govt. SAG & ors.** This Writ Petition was dismissed on 29.04.2013.

During the pendency of this writ, DoP&PW had already issued another office memorandum dated 28.01.2013. In view of this notification dated 28.01.2013, while delivering their judgment on this Writ Petition, the Hon'ble High Court observed as under:

“2. The only issue therefore which survives is, with respect to paragraph 9, of the office memorandum aforementioned which makes it applicable with effect from September 24, 2012, and thereby denying arrears to be paid to the pensioners with effect from January 01, 2006.

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8. We are in complete agreement with the reasoning of the Division Bench of the Punjab & Haryana High Court and adopt the same and do not burden ourselves any further. We conclude by noting that regards the substance of the view taken by the Tribunal, even the Central Government accepts its correctness, but insists to make the same applicable prospectively.

9. The writ petitions are dismissed. The decision of the Full Bench of the Tribunal is upheld but without any order as to costs.”

11.7 This decision by Hon'ble High Court (para 11.6 supra) was thereafter challenged by respondents in Hon'ble Supreme Court also. However, petition of the respondents was dismissed.

11.8 In view of the foregoing, the Tribunal's order (Para 11.5 supra) and date of its application as modified by Hon'ble High Court (para 11.6 supra) attained finality.

11.9 In compliance thereof (Para 11.8 supra), DoP&PW issued another notification dated 30.07.2015 wherein the date of applicability of the new instruction was also revised to 01.01.2006 in place of 24.09.2012.

With this, the method of calculation of pension for pre and post 01.01.2006 retirees became uniform and the date of giving effect to pension and arrears also became 01.01.2006 for all retirees.

12. From the sequence of events summarised in para 11.0 to 11.9 above, it is clear that the question, whether those who retired prior to 01.01.2006, were also to be granted the upgraded scale at par with those who were still in service as of 01.01.2006, i.e., as is the pleading of instant applicant in the instant OA No.4138/2017, was nowhere raised and neither was it under adjudication nor was it adjudicated in OA No.655/2010.

It is, therefore, the view of this bench that this important aspect has been missed by the bench while deciding OA No.2943/2017 which is being relied upon by instant applicant (para 4 supra). Accordingly, for the question raised by the

applicant in the instant OA seeking parity with respect to those Principals who were still in service as of 01.01.2006, this bench relies upon the judgment in OA No.655/2010 rather than relying upon the judgment dated 03.08.2018 in OA No.2943/2017.

13. The applicant has not been able to bring out any policy directives in support of his claim of seeking parity with those, who were still in service as of 01.01.2006 and were given upgradation (para 2 supra). The policy directives, which were issued in the wake of OA No.655/2010 attaining finality, were issued by DOP&PW dated 06.04.2016 (para 5 supra). Sub-Para 6 of these instructions clearly indicate 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.”

(Emphasis by this bench).

These instructions nowhere indicate applicability of upgraded scale, as has been claimed by applicant. His contentions are not finding acceptability.

14. In view of the foregoing, it is the Tribunal's view that the revised pension pay order issued to the applicant, vide order dated 28.06.2017, in the scale PB-2 plus GP Rs.6600 which

corresponds to Rs.10,000-15,200, from where the applicant had superannuated on 31.12.2000, is correct and no further revision to GP Rs.7600 is called for in his case. Accordingly, OA is dismissed being devoid of merit. No costs.

( Pradeep Kumar )  
Member (A)

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