

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2954/2017

Reserved on : 16.08.2018.

Pronounced on : 17.01.2019.

Hon'ble Ms. Praveen Mahajan, Member (A)

Mrs. Usha Ahuja,
Retired Assistant, Group "C",
Aged 72 years,
W/o Late Sh. B.H. Ahuja,
Block No. C-4-E, Flat No.173,
Janakpuri, New Delhi-110058. Applicant

(through Sh. Ranvir Singh, Advocate)
Versus

1. The Union of India, through
The Secretary,
Ministry of Finance,
Department of Expenditure,
South Block,
New Delhi-110001.

2. The Secretary,
Ministry of Personnel, P.G & Pensions,
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110003.

3. The Secretary,
Ministry of Industry, Department of Industrial
Development, Office of the Development
Commissioner for Cement Industries,
Udyog Bhavan, New Delhi-110001. Respondents

(through Sh. Rajesh Katyal, Advocate)

ORDER

Briefly stated, the facts of the current O.A. are that the applicant joined as Lower Division Clerk (LDC) on 20.03.1968 with the

respondents. She retired as Assistant on 31.05.2008 in the pay scale of Rs.5000-150-8000 and was drawing basic salary of Rs.7700/-. Applicant's pension was fixed at Rs.6772/- p.m.

2. It is submitted that on implementation of the 6th Central Pay Commission, her pay scale was revised to Rs.9300-34800 with grade pay of Rs. 4200/- and her pension was fixed at Rs.8653/- p.m. w.e.f. 01.01.2006 vide letter dated 11.10.2013 in accordance with Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners' Welfare O.M. dated 01.09.2008 regarding "Implementation of Government decision on the recommendation of Sixth Central Pay Commission – Revision of pension of pre-2006 pensioners/family pensioners etc."

2.1 The applicant also submitted that her pension was wrongly fixed at Rs. 8653/-. Her basic pay ought to have been Rs. 18,530/- (50% of which would come to Rs.9265/- as pension) as per OM dated 30.08.2008 of Department of Expenditure, Ministry of Finance.

2.2 It is averred that the Tribunal in OA-2087/2009, decided on 29.02.2012, passed an order that pre and post 01.01.2006 retirees are at par for fixation of pay/pension as per the 6th CPC. In OA-655/2010 along with three connected OAs, the Tribunal directed the respondents to refix the pension of all pre-2006 retirees w.e.f. 01.01.2006 based on the resolution dated 29.08.2008 vide which 6th

CPC recommendations were accepted. Respondents vide WP(C)-1535/2012 challenged the said order of the Tribunal before the Hon'ble High Court of Delhi, which was dismissed on 29.04.2014. Respondent No.2 also filed SLP Nos.-23055/2013 and 36148-50/2013, which were also dismissed by the Hon'ble Supreme Court.

3. After 7th Central Pay Commission, respondent No.2 communicated acceptance of the report of the committee headed by the Secretary, Department of Pension and Pensioners Welfare and to say that the revised pension/family pension w.e.f. 01.01.2006 in respect of Central Civil Pensioners/Family pensioners who retired/died prior to 01.01.2016 will be revised notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. Vide Memo No. 1(13)/EV/2017 dated 23.05.2017, Department of Expenditure of Ministry of Finance circulated the procedural actions for revision of pension of pre 01.01.2016 retirees of Central Government in pursuance to O.M. No. 38/37/2016-P&PW(A) dated 12.05.2017.

3.1 Vide O.M. dated 06.07.2017, respondent No.2 circulated the concordance tables made by the Department of Expenditure, Ministry of Finance for fixation of pension of all retirees. According to this, the pension is dependent upon the last pay drawn at the time of retirement. The applicant avers that on implementation of the

said directions, the applicant who was drawing Rs.7700/- as basic pay in the pay scale of Rs.5000-150-8000 would now be placed in the revised pay scale of Rs.9300-34800 with grade pay of Rs.4200/-.

3.2 On 17.07.2017, the applicant represented for fixation of pension at Rs.9125/-, in terms of 6th CPC accepted recommendation vide F.No.1/1/2008 dated 30.08.2008 by Deptt. of Expenditure and for revision of her wrongly fixed pension of Rs.8653/-.

4. Not having received any reply, the applicant has filed the current O.A. seeking the following reliefs:-

- “(A) Quash letter No.254260200270/1395980/A3 dated 11.10.2013 fixing applicants pension at Rs.8653/- p.m.
- (B) Direct respondents to fix applicants pension in terms of F.No. Ministry of Finance, Department of Expenditure F.No./1/2008-IC dated 30th August 2008.
- (c) Pay cost of the Original Application.”

5. In the counter reply filed on behalf of respondents, it is submitted that the applicant (Smt. Usha Ahuja) was an employee of the erstwhile Development Commissioner for Cement Industry (DCCI) and took voluntary retirement as Upper Division Clerk (UDC) on 31.05.2002. At the time of her retirement, the applicant was drawing the basic pay of Rs.7700/- in the pay scale of Rs.5000-150-8000 and her pension was fixed at Rs.3828/- per month. With the implementation of recommendations of 6th Central Pay Commission, the pension of the applicant was correctly fixed at Rs.8653/- in

accordance with DoP&T O.M. dated 01.09.2008 vide order dated 11.10.2013.

6. In rejoinder, the applicant while reiterating the facts already mentioned in the O.A. has placed reliance on the decision of Hon'ble Supreme Court in the case of **Union of India Vs. Tarsem Singh**, 2008(11)SCALE 594, holding that relief can be granted even if there is a long delay in seeking remedy, if the continuing wrong creates a continuing injury and if the relief so granted would not affect the settled rights of third parties.

7. I have gone through the case record carefully. The facts of the case not being in dispute, the same are not being reproduced for sake of brevity.

7.1 The case of the applicant is that her pension has not been fixed as per the concordance table provided vide Memo dated 30.08.2008 Department of Expenditure (Annexure A-2) of Ministry of Finance issued for implementing the recommendations of the 6th CPC. It is seen that in the concordance table annexed with the aforementioned O.M., the pre-revised scale (S-9) (in which the applicant was placed i.e. in pay scale of Rs.5000-150-8000) the systematic fixation of pay is as under:-

Pre-revised Basic Pay	Revised Pay		
	Pay in the Pay Band	Grade Pay	Revised Basic Pay

5,000	9,300	4,200	13,500
5,150	9,580	4,200	13,780
5,300	9,860	4,200	14,060
5,450	10,140	4,200	14,340
5,600	10,420	4,200	14,620
5,750	10,700	4,200	14,900
5,900	10,980	4,200	15,180
6,050	11,260	4,200	15,460
6,200	11,540	4,200	15,740
6,350	11,820	4,200	16,020
6,500	12,090	4,200	16,290
6,650	12,370	4,200	16,570
6,800	12,650	4,200	16,850
6,950	12,930	4,200	17,130
7,100	13,210	4,200	17,410
7,250	13,490	4,200	17,690
7,400	13,770	4,200	17,970
7,550	14050	4,200	18,250
7,700	14,330	4,200	18,530
7,850	14,610	4,200	18,810
8000	14,880	4,200	19,080
8,150	15,160	4,200	19,360
8,300	15,440	4,200	19,640
8,450	15,720	4,200	19,920

However, the respondents have not implemented these instructions, but have fixed the pension of the applicant as per O.M. dated 01.09.2008.

7.2 The applicant has (rightly) stated that the aforesaid Memo dated 30.08.2008 does not differentiate between those the employees, who retired before 01.01.2006 and those retiring after 01.01.2006. Hence, they cannot be discriminated because of method of pension calculation.

7.3 In support of this contention, the applicant has placed reliance upon the decision of Tribunal in the matter of OA-2087/2009 (**Ranvir SinghVs. UOI & Ors.**), wherein it has been held that the applicant,

who retired prior to 01.01.2006, shall be treated at par to pensioners who retired after 01.01.2006. In para-2 of the aforesaid order, while granting the prayer of the applicant, the decision of Full Bench of the Tribunal in OA-655/2010 (**Central Government SAG (S-29) Pensioners' Association & another Vs. UOI & Another**) decided on 01.11.2011, (on the same issue) has been cited and relied upon.

8. During the course of hearing, the learned counsel for the applicant Sh. Ranvir Singh drew my attention to the decision of the Hon'ble High Court of Delhi in WP(C)-8012/2013 (**S.A. Khan & Anr. Vs. UOI & Ors.**) decided on 07.05.2015 wherein similar view has been confirmed by their Lordships. The Apex Court has relied upon the decision of the Hon'ble Supreme Court in the case of **D.S. Nakara Vs. UOI**, 1990(4)SCC 270 wherein it was held that denial of liberalized pension to those persons who had retired before the cut-off date prescribed was against the constitutional guarantee. Before concluding, reliance was placed on the decision of Hon'ble Supreme Court in the case of **Union of India Vs. SPS Vains**, 2008(9)SCC 125 wherein it was held that:-

"28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench **in the case of D.S. Nakara (supra) where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves**. In the context of that case, which is similar to that of the instant case,

it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. **The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counter productive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.**

30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara's case (supra). **The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally.** To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step up principle envisaged in the Fundamental Rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension."

These observations have further been confirmed by their Lordships in Para-9 of the same judgment holding that:-

"9.....The Division Bench of Punjab and Haryana High Court in the above judgment has already held that the OMs dated October 03, 2008 and October 14, 2008 are contrary to OM dated September 01, 2008 and were issued by a lower authority who could not have altered the original OM being September 01, 2008. Thus the normal corollary would be that the procedure laid down under para 4.2 of the OM dated September 01, 2008 shall remain in respect of pre-2006 retirees and the clarifications issued by OMs dated October 03, 2008, October 14, 2008 and January 28, 2013 whereby the words „the pension of the pensioners who retired prior to 2006 will be reduced pro-rata wherein the pensioner who has less than the maximum required service for full pension as per Rule 49 of CCS (Pension) Rules 1972' needs to be quashed."

9. Finally, the issue was clinched by holding that (para-25):-

"25. To summarize, the petitioners must succeed on two points. Firstly that the policy decision of the Government in the Office Memorandum dated September 01, 2008 to fix pension for all

category of pensioners did not classify post and pre January 01, 2006 retirees and all were entitled to pension as per a common formula. Under the garb of clarification the Office Memorandum of October 03, 2008 followed by the Office Memorandum dated October 14, 2008 and repeated in the Office Memorandum dated January 28, 2013 the cut-off date was inserted by an officer of the Government having no authority to cut down the beneficial policy decision notified on September 01, 2008. Secondly for the reason the cut-off date is arbitrary and fouls [Article 14](#) of the Constitution of India."

10. The respondents in their counter affidavit have not been able to explain or rebut any of the arguments advanced by the applicant in OA. Their contention is that the O.M. No. 1/1/2008-IC dated 30.08.2008 deals with fixation of pay of serving government servants and is not regarding pension of retired government servant. This inference of the respondents does not find support from the language of the O.M. dated 30.08.2008.

11. In view of the aforesaid, the O.A. is allowed. The letter dated 11.10.2013 fixing the applicant's pension at Rs. 8653/- is quashed and set aside. Respondents are directed to fix the pension of the applicant in terms of O.M. dated 30.08.2008 of Department of Expenditure. This exercise must be completed within a span of four months from the date of receipt of a certified copy of this order. No costs.

**(Praveen Mahajan)
Member (A)**

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