

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. No.1912/2016**

**New Delhi this the 31<sup>st</sup> day of July, 2019**

**HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Izhar Ahmad (Const.)

S/o Late Amir Ahmad, Age 61 years,

R/o H.No.12-A/3-C,

Gali No.2, Jamalul Ka Bagh,

Maujpur, Delhi-110053.

..Applicant

(By Advocate: Shri L.C. Rajput)

Versus

1. Secretary,  
Govt. of NCT of Delhi,  
The Principal Account Office,  
B-Block, Vikas Bhawan,  
I.P. Estate,  
New Delhi.

2. The Pay & Account Officer,  
PAO-IV, Tis Hazari,  
Delhi-110054.

..Respondents

(By Advocate: Shri Amit Anand)

**ORDER (ORAL)**

This OA has been filed by the applicant claiming the following reliefs:-

“(i) Quash/set aside the order bearing No.MISC/PAO-IV/DP-1/Pen./2016/762 dated 04.05.2016 (Annexure A-1).

(ii) To direct the respondents to grant Grade Pay of Rs.2800/- w.e.f. 01.01.2006 and to compute and ascertain the pensionary benefits on the basis of grade pay of Rs.2800/- and to pay all consequential benefits including the arrears w.e.f. 01.01.2006 till the same are paid pursuant to the order No.13911-

912/Estt.(II) Ist Bn. DAP dated 05.10.2015 passed by the office of the Deputy Commissioner of Police, Ist Bn. DAP Delhi.

(iii) Pass any other/further order in favour of the applicant and against the respondents which may be deemed just and proper in the circumstances of the case”.

2. The material facts in this case are that the applicant was enrolled as Constable in Delhi Police on 19.08.1974 and he served the Delhi Police in a sincere manner and his service remained unblemished throughout. He took voluntary retirement w.e.f 04.08.2000 from the Delhi Police and his last unit at the time of voluntary retirement was 4<sup>th</sup> Bn. DAP, Delhi. On voluntary retirement, he was expected to get all the retiral dues such as pension, gratuity, provident fund etc. as per the existing rules but unfortunately, he was not granted the Grade Pay as per his entitlement.

3. The applicant has further submitted that though he was not promoted and remained as Constable throughout his service career but by virtue of his seniority, he received financial upgradations as per the rules. On the date of his voluntary retirement, he was getting pay scale of Rs.4000-100-6000 (equivalent to the scale of ASI) but his pension was computed at Rs.1942/- which was the pension of ASI and he continued to get the same up to 01.01.2006, i.e. the effective date of implementation of the 6<sup>th</sup> Pay Commission's report. The VI<sup>th</sup> CPC upgraded the pay scale as per seniority and

the Grade Pay of Constable, Head Constable and ASI was fixed at Rs.2000, Rs.2400 and Rs.2800/- respectively. As per the upgraded pay scale of the applicant which he was getting before 01.01.2006, his pension and other benefits should have been suitably increased and fixed after VIth Pay Commission considering his Grade Pay of Rs.2800/- in the Pay Band of Rs.5000/- but his pension has been fixed on the basis of Grade Pay of Rs.2400/-. Thereafter, he represented to the authorities that his pensionary benefits be calculated on the basis of the Grade Pay of Rs.2800/- and not on the basis of Rs.2400/-. Immediately, thereafter, he filed an application on 01.12.2015 seeking information under Right to Information Act, 2005 that his pension has been wrongly fixed on the basis of Grade Pay of Rs.2400/- but not Rs.2800/-. Thereafter, the Dy. Commissioner of Police, Ist Bn. DAP, Delhi on 05.10.2015 (Annexure A-4), wrote to the Pay & Accounts Officer, PAO-IV, Tis Hazari, Delhi to revise his pension as under:-

“An application submitted by retired Ct. Izhar Ahmed No.3139/DAP (DOR-04.08.2000 VRS from 4<sup>th</sup> Bn. DAP) alongwith its enclosures are sent herewith for making necessary correction in his grade pay in the revision of pension pre-2006 order issued vide your office letter dated 05.03.2014. It is also mentioned that his name was mentioned at sl.no.81 in the list which was issued vide your office letter No.PAO-4/E-Rev./2014/5197 dated 24.09.2014 and required detail on annexure III also sent to your office vide this office letter No.18914/Estt. (II) Ist Bn. DAP dated 10.08.22015 and it has already been mentioned on the annexure-III that his grade pay has been mentioned as 2400/- in the your revision orders which is not correct. His correct grade pay is 2800/-.

It is requested that his pension may be revised w.e.f. 1.1.2006 instead from 24.09.2012 and necessary correction may be made about his grade pay in your record under intimation to the applicant & all other concern. It is also intimated that your office letter No.F.Revision/PAO-4/2014/8212 dated 05.03.2014 (copy enclosed) was issued by PAO-4 and also addressed to PAO-4 and also addressed to PAO-4 which is seems to be wrong”.

After receiving the above letter, applicant many times requested the office of the respondents to revise his pension but in vain. Finally, a reply was received from the respondents who rejected the same vide letter dated 04.05.2016 (Annexure A-1) in which it was mentioned as under:-

“In continuation to this office letter no.F.Misc./PAO-IV/Pe./DP-1/2016/112-13 dated 06/04/2016 on the subject cited above, being sanctioning authority for pension. HOO is competent to authorize/revise pension of the retiree.

Moreover, the revision of pension in r/o Shri Izhar Ahmed has been done according to Ministry of Personnel, PG & Pensions, Department of Pension & Pensioner Welfare OM No.38/37/08-P & PW (A) dated 28.01.2013. As the pay scale of retiree at the time of Vol. Retirement was 4000-100-6000, which falls under the category of 5200-20200 with Grade Pay of Rs.2400/- as per abovesaid OM”.

Being aggrieved by the reply of the respondents, he has prayed that the OA be allowed.

4. The respondents have filed their reply and submitted that applicant joined Delhi Police as Constable on 19.08.1974 and took voluntary retirement from service w.e.f. 04.08.2000. On his retirement, he was allowed pensionary and other benefits as per the

rules and orders applicable on the date of retirement. In implementation of the recommendations of the 6<sup>th</sup> Pay Commission, the Govt. of India issued OM dated 01.09.2008 wherein in para 4.1 it was ordered that in the first phase, the pension Disbursing Authorities including banks would revise the pension of existing pre-2006 pensioners/family pensioners will be consolidated w.e.f. 01.10.2006 by adding the existing pension/family pension; dearness pension, where applicant, 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 OM No.42/2/2006-P&PW (G) dated 5.4.2006; fitment weightage @ 40% of the existing pension/family pension. Where the existing pension in (i) 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 w.e.f. 01.01.2006. Further, in para 4.2 of the said OM it was ordered that fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired.

5. The respondents have further submitted that in the subsequent OM dated 28.01.2013, Govt. of India, Ministry of Personnel, PG & Pension, Department of Pension & Pensioners Welfare has further ordered that pension of pre-2006 pensioners as revised w.e.f. 01.01.2006 in terms of para 4.1 or 4.2 of the aforesaid OM dated 1.9.2008 as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM dated 30.08.2008. They have also stated that pension so calculated/arrived at will be reduced pro-rata where the pensioner had less than maximum service required for full pension as per Rule 49 of the CCS (Pension) Rules, 1972. The pension as per OM dated 28.01.2013 was to be revised w.e.f. 24.09.2012. The Govt. of India has further issued orders vide OM dated 30.07.2015 clarifying therein that benefit of revision of pension/family pension would be applicable w.e.f. 01.01.2006 in place of 24.09.2012. They have also relied on the OM dated 06.04.2016 clarifying therein 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 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. As the applicant took voluntary retirement from service w.e.f. 4.8.2000, he was eligible for revision of pension w.e.f. 1.1.2006 in view of above referred various orders of the Govt. of India, Department of Pensions & Pensioners Welfare. Further, as the applicant retired from service while holding pay scale of Rs.4000-6000 and was eligible for revision of pension @ 50% of the minimum of pay scale of Rs.5200-20200 and Grade Pay of Rs.2400/-, hence his pension was rightly fixed at the stage of Rs.4548/- per month w.e.f. 01.01.2006 and subsequently @ Rs.4920/- per month w.e.f. 01.01.2006.

6. Heard the learned counsel for the parties and perused the pleadings on record.

7. In this case, the sole issue raised by the applicant is whether his pension should be fixed @ Rs.2400/- or Rs.2800? The answer is that since applicant took voluntary retirement w.e.f 04.08.2000 after rendering about 26 years of service, hence he is not entitled to claim benefit extended to persons who retired on superannuation. This very point was considered by the Hon'ble Apex Court in Appeal (Civil) No.6166/1999 titled as UOI and Others Vs. Rakesh Kumar decided on 30.03.2001 and the relevant portion of the same reads as under:-

“49. Amount of Pension.

(2) (a) **In the case of a Government servant retiring in accordance with the provisions of**

**these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem”.**

8. The above quoted position is fully applicable in the case of the applicant as he has not completed the qualifying service of 33 years and as such his pension has been rightly fixed on the basis of the Grade Pay of Rs.2400, which cannot be questioned. Moreover, the applicant's case is fully covered by the order passed by the Respondents on 04.05.2016 wherein it has been mentioned that **“the revision of pension in r/o Shri Izhar Ahmed has been done according to Ministry of Personnel, PG & Pensions, Department of Pension & Pensioner Welfare OM No.38/37/08-P & PW (A) dated 28.01.2013. As the pay scale of retiree at the time of Vol. Retirement was 4000-100-6000, which falls under the category of 5200-20200 with Grade Pay of Rs.2400/- as per abovesaid OM”** and as such the OA is bereft of merit.

9. In view of the above, the OA has no merit and the same is dismissed. No costs.

**(NITA CHOWDHURY)**  
**MEMBER (A)**

Rakesh