

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.4705 of 2018

Orders reserved on : 24.09.2019

Orders pronounced on : 27.09.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

K.S. Dhingra
S/o S. Santokh Singh Dhingra
Aged about 69 years
Resident of A-17 (Second Floor),
Swaran Singh, Delhi-110033
Dy. Director (Retd.)

.... Applicant
(Applicant in person)

VERSUS

1. Union of India through Secretary,
Ministry of Defence,
South Block, New Delhi-110011.
2. Secretary,
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001.
3. Secretary,
Department of Pension and Pensioner's Welfare
Lok Nayak Bhawan,
Khan Market, New Delhi-110003.
4. Joint Secretary & Chief Administrative Officer,
Ministry of Defence,
E Block Hutmants, Dara Shikoh Marg,
New Delhi-110011.
5. Chief Manager,
State Bank of India,
Centralised Pension Processing Centre,
2nd Floor, Chandni Chowk,
Delhi-110006.

..... Respondents
(By Advocate : Shri Piyush Gaur)

O R D E R

Heard the applicant, who appeared in person and Shri Piyush Gaur, learned counsel for the respondents.

2. By filing this OA, the applicant is seeking the following reliefs:-

- “(a) set aside the impugned order dated 10.12.2018 (Annexure A-1) being perverse and untenable in law.
- (b) hold that the applicant’s pension was correctly fixed under PPO No.C/MISC/180150 dated 09.09.2005 (Annexure A-2) after taking into account his basic pay of Rs.19900/- in the pay scale of Rs.18400-500-22400, and revised vide Corrigendum PPO No.C/Corr/6th CPC/056137/ 2015 dated 26.08.2015 (Annexure A-3).
- (c) direct the respondents to revise the applicant’s pension based on the Seventh Pay Commission, as accepted by the Central Government, taking the details of basic pay etc. as per PPO No.C/MISC/18105/2005 dated 9.9.2005 (Annexure A-2) as the basis.
- (d) award the cost of the proceedings in favour of the applicant.
- (e) pass such other order or direction as this Hon’ble Tribunal may consider appropriate in the facts and circumstances of the case.”

3. The applicant in this case has challenged the order dated 10.12.2018 by which the respondents have written to Chief Manager, State Bank of India informing them that pension of the applicant has been downgraded w.e.f.11.10.2018 and that necessary action in pursuance of

revised corrigendum dated 06.12.2018 with regard to PPO No.CCORMISC001692018 should be taken by them.

4. The applicant, who was working as Civilian Officer Staff with Ministry of Defence, had applied to go on deputation basis with Central Electricity Regulatory Commission and was selected and duly appointed as Chief (Legal) under proper selection process in the year 1999. His period of deputation was extended from time to time and the last extension being upto 07.06.2004. Subsequently the applicant was permanently absorbed on the post of Chief (Legal) in the Central Electricity Regulatory Commission, New Delhi on 07.06.2004. The applicant opted for receiving pension from the Central Commission for entire service rendered by him under the Central Government and Central Commission on pro rata retirement benefits of the service rendered by him with the Central Government.

4.1 The applicant's pension was fixed by PPO No. C/MISC/18105/2005 09.09.2005 taking his basic pay as Rs.19900/- in the pay scale of Rs.18400-500-22400/-. This PPO was revised vide corrigendum dated 26.08.2015 based on the 6th Pay Commission with reference to pay scale of Rs.18400-500-22400/-. The applicant on implementation of recommendation of the 7th Pay Commission had been receiving basic pension of Rs.70290/- since 01.01.2016.

However, vide impugned order dated 10.12.2018, the respondents have illegally and arbitrarily downgraded his pension without assigning any reasons by way of any communication or show cause notice although he has submitted his representations through letters dated 12.11.2018 and 8.12.2018 as well as email dated 8.12.2018 to the respondents.

4.2 According to the applicant, the aforesaid impugned order dated 10.12.2018 is violative of provisions of Rule 70 of the CCS (Pension) Rules, 1972, as sub-rule (1) of Rule 70 of the CCS (Pension) Rules, 1972 provides that pension once authorized after final assessment shall not be revised to the disadvantage of the retired Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently. Further sub-rule (2) of Rule 70 of the CCS (Pension) Rules, 1972 provides that the retired Government servant shall be served with notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of the notice by him.

4.3 According to the applicant, the applicant's pension has been revised to his disadvantage retrospectively and once implemented, it will involve recovery from the applicant. However, the applicant has not been served with notice of

recovery by Head of Office as commanded under sub-rule (2) of Rule 70 of the Rules *ibid*. On the contrary, respondent no.4 in their anxiety to give effect to reduce his pension, as noted from the impugned order, has advised the Pension Disbursing Authority (respondent No.5) to take action in the matter at the earliest even without calculating the excess amount involved.

5. On the other hand, learned counsel for the respondents submitted by referring to the counter affidavit that the applicant had joined AFHQ on the post of Assistant on 26.7.1973. He went on deputation with National Security Guard (NSG) on the post of Deputy Judge Advocate General (Sqn. Commander) with effect from 26.07.1993. Moreover the applicant before joining his parent office from NSG had already applied for deputation in Central Electricity Regulatory Commission (CERC) on the post of Joint Chief (Legal) and consequent upon his selection, he was relieved w.e.f. 7.6.1999. During his tenure with CERC, he was selected to the post of Chief (Legal) in the pay scale of Rs.18,400-22,400 and appointed as Chief (Legal) in CERC w.e.f. 27.12.2000. While on deputation with CERC, the applicant applied for permanent absorption in CERC. Accordingly, he had submitted his technical resignation from his parent cadre for permanent absorption in CERC. The applicant vide his letter dated 18.1.2005 exercised the option

to draw pro-rata pensionary benefits from the answering respondent, for the service rendered upto 6.6.2004 from AFHQ, i.e., for the period prior to his absorption in CERC.

5.1 Counsel further submitted that the case for grant of pro-rata pensionary benefits was erroneously processed as per Note-10 below Rule 33 of CCS (Pension) Rules, 1972 instead of Note-7 below Rule 33 of CCS (Pension) Rules, 1972 and were processed taking under consideration last pay drawn Rs.19900/- + Dearness Pay Rs. 9950/- which was equivalent to the pay scale of the post of Head of Department (Joint Secretary), which is three scale higher than his substantive post (Dy. Director) under the pay scale of Rs.10,000-325-15,200/- in AFHQ.

5.2 Counsel further contended that after implementation of 7th CPC, at the time of processing of revision of pension cases in respect of Pre-2016 pensioners as per 7th CPC, on perusal and examining of *ibid* case, it has come to notice that pension for grant of pro-rata pensionary benefits to the applicant, permanently absorbed with CERC were erroneously/wrongly calculated. He further submitted that the case has been processed strictly as per the provisions of Rule 70 of CCS (Pension) Rules, 1972. Thereafter, after taking the approval of Defence Secretary, the case was referred to Department of Pension and Pensioners Welfare (DOP&PW) for their concurrence. On receipt of concurrence from DOP&PW and

further after approval of Head of Department, i.e., JS & CAO, case for revision of pensionary benefits after regularization of pay (Notionally) in the pay scale of Rs.10,000-325-15,2000 in respect of the applicant was forwarded to PCDA (Pension) Allahabad for issue of corrigendum PPO accordingly. After issuing of corrigendum PPO, the same was forwarded to concerned PDA, i.e., SBI, CPPC, Chandni Chowk, Delhi with a copy to the applicant vide letter dated 10.12.2018.

5.3 Counsel further submitted that due procedure in terms of DOP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 is being followed. He also submitted that in the month of April 2019, the pension sanctioning authority, i.e., PCDA (Pension) Allahabad has carried out 7th CPC revision of pension of pre-2016 balance pending cases *suo-moto* on the basis of their master data of January 2016. However, in the instant case, 7th CPC e-PPO No.406200500256-1399 has also been notified *suo-moto* and latest Corrigendum PPO No.CCORRMISC001692018 which has been issued manually on 6.12.2018 could not be linked by the system with the master data. Therefore, *suo-moto* generated 7th CPC e-PPO No. 406200500256-1399 has been cancelled vide e-PPO No.406200500256-1301. However, it has been clarified that the said cancellation is subject to outcome of this OA.

6. Having heard leaned counsel for the parties and perused the pleadings on record, it is observed that although

the respondents contended that the case of the applicant has been processed strictly as per the provisions of Rule 70 of the CCS (Pension) Rules, 1972, but despite the representations in the form of letters dated 12.11.2018 and 8.12.2018 as well as email dated 8.12.2018 addressed to the respondents by the applicant, they have chosen not to issue any show cause notice before issuing the order dated 10.12.2018 communicating the downward revision of his pension vide Corrigendum PPO No. CCORRMISC001692018 dated 6.12.2018. The aforesaid action of the Respondents is not in compliance of sub-rule (1) Rule 70 of the CCS(Pension) Rules, 1972 as under the said Rules, 'once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error'. It is further to be noted that even in cases of clerical errors where pension has to be revised under sub-rule (2) of Rule 70 ibid, the applicant is entitled for a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him. Admittedly, the impugned letter dated 10.12.2018 reducing his pension was issued to him without any notice. It is pertinent to mention that the Hon'ble Supreme Court of India in the case of ***M. Gopalkrishna Naidu Vs. State of M.P.*** AIR 1968 SC 240 held that 'if an opportunity to show cause is not afforded,

the order is liable to be struck down as invalid on the ground that it is one in breach of principles of natural justice'. Hence, the impugned order is quashed. However, in the facts and circumstances of this case, the respondents are directed to issue a show cause notice to the applicant in terms of provisions of Rule 70 of the Rules *ibid* and give him 30 days' time to respond to the same and pass a reasoned and speaking order within three months thereafter. In case the applicant does not submit his reply within the period as stipulated above, they shall pass speaking order within the period as stipulated above.

7. In the result, the present OA is disposed of in above terms. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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