

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION No. 170/00483/2018

TODAY, THIS THE 01st DAY OF OCTOBER, 2019

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

D.Venkateswara Rao, IAS
Son of late D.Lakshmaiah
Aged about 67 years
Residing at No.24, 2nd Block
18th Main, Koramangala
Bangalore-560 034.

...Applicant

(By Advocate Shri B.S.Venkatesh Kumar)
Vs.

1. Union of India represented by
Secretary to Government
Department of Personnel and Training
North Block,
New Delhi – 110 001
2. The Chief Secretary to
Government of Karnataka
Department of Personnel and Administrative Reforms
Vidhana Soudha
Bangalore-560 001.
3. The Accountant General (A&E)
Karnataka
Indian Audit & Accounts Department
Park House Road
Bangalore-560 001.
4. The Secretary to the Government
Department of Expenditure
Implementation Cell
Room No.214, The Ashok
New Delhi.

...Respondents

(By Advocate Shri V.N.Holla, Sr. SC for CG)

ORDER

(Per Hon'ble Shri C.V.Sankar, Administrative Member)

The facts of the case are as follows:

2. The applicant is a retired IAS officer having been put in about 35 years of service including 33 years in IAS and about 1½ years in IFS. He retired from service on 31.8.2010. Earlier he filed an OA.No.1711/2015 for promotion to apex scale even though he was cleared by DPC for such promotion well before his date of retirement on superannuation. During the pendency of the said OA, Govt. of India implemented the VII Pay Commission recommendations and in accordance with the same, his pension was revised to Rs.102550/-. As he was not given the eligible pension of Rs.112500/-, he made representations to the 1st and 3rd respondents. Since the same were not considered and disposed of, he filed an MA.451/2017 in the said OA on 26.10.2017(Annexure-A1). The Tribunal finally disposed of the said OA with the direction to dispose of the representations by a speaking order under intimation to the applicant(Annexure-A2). On 23.1.2018, the applicant got issued a legal notice to the 1st respondent with a request to look into the matter and pass speaking order granting necessary relief to him(Annexure-A3). 1st respondent has passed an order dtd.10.4.2018(Annexure-A4) whereby the relief of correct fixation of pension is not acceded to and as the order is a non-speaking cryptic one, the applicant filed the present OA with the following relief:

- a. Call for records of the case from the respondents and on perusal,*
- b. Quash and set aside the impugned order bearing No.22012/1/2018-AIS-II dated 10.4.2018 (Annexure A4) passed by the first respondent.*
- c. Issue a consequential direction to the respondents to reconsider the case of the applicant in the matter of his pension consequent to VII Pay Commission recommendation and refix his pension at Rs.1,12,050/- in view of the applicant stagnating in the scale for more than three and a half years.*
- d. Grant such other relief/s as this Hon'ble Tribunal deems fit to grant to the applicant in the circumstances of the case including an order as to*

costs of this application.

3. The applicant submits that as per the letter of the 3rd respondent dtd.21/16.8.2017(Annexure-A10 to the MA.451/2017), the last pay drawn by the applicant was Rs.79,000 in the scale of Rs.67000-79000. Revised pay scale extended by Govt. of India in 7th CPC dispensation is Rs.182200-224100 w.e.f. 1.1.2016. Therefore, it can be seen that replacement pay of Rs.67000 is Rs.182200 and that of Rs.79000 is Rs.224100. Therefore, as the applicant drew last pay of Rs.79000, the replacement pay should have been Rs.224100 and 50% of that comes to Rs.112050. Therefore, he was entitled for fixation of revised pension at Rs.112050 and denial of the same in the impugned order is arbitrary, unjust and unsustainable. It is also seen from the above letter of 3rd respondent that the applicant was drawing stagnated pay of Rs.79000 from 1.7.2007 to 31.8.2010 i.e. for more than three years. In terms of Dept. of Expenditure OM dtd.7.9.2016 referred in the above letter, there is a provision for grant of additional increment to those who have stagnated in the same scale. The applicant sought for extension of this benefit to him and the 3rd respondent has written to 4th respondent seeking clarification in this regard. However, no action was taken by the respondents. However, it is clear that the applicant is entitled for grant of additional increment and thereby fixation of applicable pension. The 3rd respondent in his letter dtd.19.9.2017 has again sought for clarification from the 4th respondent whether the pay of the applicant could be notionally brought to the maximum of the Pay Level 15 in the 7th CPC i.e. Rs.224100 and fix the revised pension at Rs.112050. But the 4th respondent has not taken any action in this regard. Revision of pension of All India Officers falls within the purview of AIS Division of DoP&T. Accordingly, Dept. of Pension and

Pensioners' Welfare wrote a letter on 11.9.2017 to the AIS Division of 1st respondent. However, a reading of the impugned order does not indicate whether the said order was passed after obtaining the views of the AIS Division of DoPT. Hence, the impugned order dtd.10.4.2018 is liable to be quashed and set aside.

4. The respondents, on the other hand, have submitted in their reply statement that the applicant was an officer of the Indian Administrative Service of 1977 batch and was allotted to Karnataka cadre. He was an officer of Indian Forest Service of 1976 batch. His grievance that even after putting 33 years of service in IAS and 1 year 6 months in IFS, he could not get the apex scale, has been considered by this Tribunal in OA.No.1711/2015 filed by the applicant and the same was dismissed on the ground of lack of merits. However, it had directed the respondents to dispose of the representation by a speaking order under intimation to the applicant within a period of 12 weeks from the date of receipt of certified copy of the order. The copy of the said order was received by the 1st respondent on 31.01.2018. The Tribunal had viewed that the contention of the applicant was not tenable since no promotion can be granted in excess of vacancies approved by the 1st respondent(DoP&T) as per rules. The fact remains that the applicant was nowhere within the sight of the promotion at the time of his retirement. It was observed that if there were no vacancies before his retirement, that cannot in any way be seen as a matter of stagnation. The cause of action as per the applicant arose after the promotion of one of the officers of his batch on 31.7.2010 and before his retirement on 31.8.2010 whereas the applicant had filed the OA after a delay of about 2 to 3 years. On perusal of the representations of the applicant, it was noted that it was denial of promotion to the apex grade by

the Govt. of Karnataka thereby leading to the stagnation of the applicant at HAG scale till his retirement. It was learnt that in the year 2010, the State Govt. with the approval from the Central Govt. promoted 5 IAS officers of 1976 and 1977 batch to the apex scale, whereas the DPC had recommended 6 officers for promotion, the applicant was the sixth person in the list of persons. Meanwhile, the applicant retired from service on 31.8.2010. The concurrence to the availability of 5 vacancies was accorded to the Govt. of Karnataka vide letter dtd.15.12.2009.

5. The respondents submit that in compliance to the Tribunal's order, the department issued a speaking order vide communication dtd.10.4.2018(Annexure-R1) wherein it has been clearly stated that the officer superannuated while working in HAG level and drawing the maximum basic pay of Rs.79000/-. In the present OA, the applicant has stated that the relief of correct fixation of pension is not acceded to by the respondents while passing the speaking order dtd.10.4.2018. The policy of fixations of pay and pensions falls within the purview of the 1st respondent, yet matters pertaining to implementation of this policy vis-à-vis individual officer falls within the purview of the State Government. Accordingly, his pay has been re-fixed in 7th CPC at Rs.205100 vide AG Office, Karnataka order dtd.16.8.2017 for purpose of pension fixation in terms of the Ministry's order dtd.12.5.2017(Annexure-R5) and his pension has been duly re-fixed to Rs.102050/- which is in tune with the extant instructions. Therefore, the pay/pension fixed by the office of the Accountant General (A&E), Karnataka as per the extant rules vide letter dtd.21.8.2017 is in order. Hence, the OA being devoid of merit is liable to be dismissed.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The applicant has filed his written argument note. The applicant has made two requests. The first one relates to the pay fixed on notional basis on 01.01.2016 after the 7th CPC recommendations were accepted by the Govt. of India. It is not in dispute that he had reached the maximum pay of Rs.79000/- in the scale of pay of Rs.67000-79000 w.e.f. 01.01.2007 itself. The revised pay scale of the HAG scale to which the applicant belongs w.e.f. 01.01.2016 was Rs.182200-224100. A simple juxtaposition of the maximum of the scale before and after 01.01.2016 would show that the pay of the applicant which was at the highest at Rs.79000 before 01.01.2016 should have automatically been fixed as Rs.224100. The respondents would however state that the calculations are not fixed in a straight forward manner like this but will be as per the directions given in the OM dtd.12.5.2017(Annexure-R5) wherein it is mentioned that while fixing pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional pay as on 01.01.2016 shall be the revised pension. In the said OM a few examples of the notional pay fixation has been given vide Annexure-I wherein a person with a pay at the time of his retirement of Rs.79000 will have to be given a pay fixed on notional basis as on 01.01.2016 of Rs.205100(Level-15). As rightly contended by the respondents, the applicant's notional pay as on 01.01.2016 has been fixed according to the instructions of the Govt. of India in this regard and based on the formulae which have been prescribed by the Govt. of India which is applicable to all the concerned Government servants. Accordingly, his revised pension has

also been fixed as Rs.102550 i.e. 50% of pay fixed on notional basis. The contention of the respondents is accepted.

7. The second request of the applicant is for considering him eligible for an additional increment vide OM dtd.7.9.2016 of the Dept. of Expenditure, Implementation Cell wherein in para-2, it has been stated as follows:

2. The matter was examined in this Department and it has been decided that in case of persons who had been drawing maximum of the applicable Pay Band and Grade Pay or scale, as the case may be, for more than two years as on 01.01.2016, one increment in the applicable Level in the Pay Matrix shall be granted on 01.01.2016 for every two completed years of stagnation at the maximum of the said Pay Band and Grade Pay or scale. Grant of additional increment(s) shall be subject to condition that the pay arrived at after grant of such increment does not exceed the maximum of the applicable Level in the Pay Matrix. Illustrations:

<i>Pay Band and Grade Pay or scale</i>	<i>PB-4 (37400-67000), GP 10000</i>	<i>HAG (67000-79000)</i>
<i>Maximum of the applicable Pay Band and Grade Pay or scale</i>	<i>77000</i>	<i>79000</i>
<i>Date on which pay fixed at maximum of the applicable Pay Band and Grade Pay or scale</i>	<i>01.07.2014</i>	<i>01.07.2013</i>
<i>Revised Pay in the applicable Level in the new Pay Matrix</i>	<i>199600</i>	<i>205100</i>
<i>No. of years completed at maximum of the applicable Pay Band and Grade Pay or scale as on 01.01.2016</i>	<i>1 year and 6 months</i>	<i>2 years and 6 months</i>
<i>No. of increment(s) to be granted on 01.01.2016</i>	<i>Nil</i>	<i>01</i>
<i>Revised Pay after grant of increment on 01.01.2016</i>	<i>199600</i>	<i>211300</i>

8. The orders of the Govt. of India in this regard are clearly applicable to the applicant since he had reached the maximum of the pay scale on 01.01.2007 itself and he was stagnating in the same pay scale for more than 2 years and 7 months till his retirement on 31.08.2010. There was no need for the Office of the Accountant General or other persons to seek clarification in this regard as the

said OM is clearly applicable to him. This point has not been answered in Annexure-A4 by the respondents. We, therefore, direct the respondent No.2 to issue necessary orders in this regard by granting him an extra increment for the more than two years of service he had rendered at the stagnated pay before the date of his retirement and the respondent No.3 will accordingly revise the pension w.e.f. 1.1.2016. The respondent No.2 should complete this exercise within a period of one(1) month from the date of issue of this order and the respondent No.3 within a period of one(1) month from the date of issue of order by the respondent No.2.

9. The OA is disposed of accordingly. No costs.

(C.V.SANKAR)
MEMBER(ADMN)

(DR. K.B. SURESH)
MEMBER(JUDL)

/ps/

Annexures referred to by the applicant in the OA.170/00483/2018

Annexure-A1: Copy of the MA.No.451/2017 in OA.No.1711/2015 with Annexures
Annexure-A2: Copy of order dtd.3.1.2018 in OA.No.1711/2015
Annexure-A3: Copy of the representation through advocate sent by the applicant
dtd.23.1.2018
Annexure-A4: Copy of impugned order dtd.10.4.2018

Annexures with reply statement:

Annexure-R1: DOPT New Delhi order dtd.10.4.2018
Annexure-R2: DOPT letter dtd.17.7.2018

Annexure-R3: Counsel's email dtd.19.07.2019

Annexure-R4: Counsel's email dtd.19.07.2019

Annexure-R5: DOPT OM dtd.12.5.2017

Annexures with Brief Note of Arguments submitted by the applicant:

Annexure-1: Copy of OM dtd.7.9.2016

Annexures with MA filed by the respondents for waiver of cost:

Annexure-II: DoPT letter dtd.17.7.2018
