

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00631/2018

Orders pronounced on: 20.9.2019
(Orders reserved on: 05.09.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Y.P. Jhanji, Aged 80 years S/o Sh. Harbans Lal, Retired Sub Divisional Officer Phones, Department of Telecom, O/O General Manager Telecom, Ludhiana, R/o H. No. 1194, Krishna Nagar, Railway Road, Jagraon, District Ludhiana, Group B.

...Applicant

Versus

1. Union of India, through Secretary to Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
2. Secretary to the Government of India, Ministry of Communication and Information Technology, Government of India, Department of Telecom, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001.
3. Controller of Communication Accounts, Department of Telecommunication, Punjab Circle, Plot No.2C, Sector 27-A, Madhya Marg, Chandigarh-160030.

...Respondents

**Present: MR. R.K. SHARMA, ADVOCATE, FOR THE APPLICANT.
MR. B.B. SHARMA, ADVOCATE, FOR THE RESPONDENTS.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)):

The applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the orders dated 10.2.2017 (Annexure A-1), dated 1.6.2017 (Annexure A-2), dated 3.4.2018 (Annexure A-3), and for issuance of directions to the respondents to fix his pay by taking into consideration basic pay of Rs.9000/- drawn by him in the pay scale of Rs.7500-12000/-, on the date of his retirement on 31.03.1996, revised w.e.f. 01.01.2006 and he being at the stage of Rs.16740/-, with further directions to fix his pension w.e.f. 01.01.2006 by taking into consideration PB-2 i.e. Rs.9300-34800 Grade Pay of Rs.5400/- in view of the judgment of Hon'ble Delhi High Court rendered in W.P.(C) No.3035/ 2016 (**RAM PHAL VS. UNION OF INDIA & OTHERS**), decided on 03.08.2016 and grant him all consequential benefits of correct pay fixation with arrears of pension.

2. The facts of the case are largely not in dispute. The applicant joined as a Clerk in the year August 1959. He reached to the post of Sub Divisional Officer Telecom on 01.04.1991, and then as SDO, in the pay scale of Rs.2375-3500 (RPS) w.e.f. 01.04.1991. The pay scales of the Central Government employees were revised w.e.f. 01.01.1996 and his scale was revised to Rs.7500-12000 w.e.f. 01.01.1996. At the time of his retirement on 31.03.1996, he was drawing basic pay of Rs.9000/- in the pay scale of Rs.7500-12000. The pay scales of the Central Government employees were further revised w.e.f. 01.01.2006 and the scale of Rs.7500-12000 was revised to PB-2 i.e. Rs.9300-34800 with Grade Pay of Rs.4800/-. This pay scale was up-graded to Rs.5400/- in respect of those Group 'B' Officers of the department, who had rendered more than four years service in the

grade of Group 'B' officer. This recommendation was made by the 6th C.P.C. also in para No. 10-D of Resolution dated 29.08.2008 and it was accepted by the Government and implemented also. The upgraded Grade pay of Rs. 5400/- in PB-II has also been accepted by respondent No.2 vide order dated 01.06.2017 and by respondent No.3 vide order dated 03.04.2018, but it has been denied to applicant merely on the basis of Ministry of Personnel, Public Grievances and Pension Circular dated 11.02.2009, without taking into consideration that offending part whereof on the basis of revised up-graded pay scale to the pre-01.01.2006 retirees has already been quashed by the Hon'ble high Court of Delhi vide order dated 03.08.2016, thus equating pre-2006/post-2006 for grant of up-graded grade pay of Rs. 5400/- in PB-II.

3. The applicant further pleads that the respondent department fixed pension of the applicant w.e.f. 01.01.2006 without taking into consideration minimum of the pre-revised scale of Rs.7500-12000. Pay Band/Grade Pay of Rs. 4800/- was applied on 7500/- i.e. $7500 \times 1.86 + 4800/- = 18750/-$ (pension 50% i.e. 9375) the applicant was being paid Rs. 10144/- with a different formula w.e.f. 01.01.2006 the respondent No. 2 held his basic pension of Rs. 10144/- as valid being higher as compared to Rs. 9375/-. It is pleaded that this action of respondents is illegal, as Principal Bench of this Tribunal in order dated 01.11.2011 in O.As. No. 655/2010 etc. directed that the past pensioners may be granted w.e.f. 01.01.2006 the minimum pension with reference to the fitment table applicable for revision of pay of serving employees. On the basis of this decision, OM dated 5th March, 2015 (Annexure A-6) was also issued. It is submitted that High Court of Delhi in its order dated 29.04.2013 in WP (C) No. 1335 of 2012 has held that the pay of the retiree i.e. who retired before 1.1.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that the pension fixed is such that it is not

lower than 50% of the minimum of the pay in the Band and the grade pay thereon. Same view was taken in judgment dated 07.05.2015 in W.P.(C) No. 8012/2013.

4. The second grievance of applicant is regarding non-grant of benefit of upgraded pay scale by taking into consideration Grade Pay of Rs.5400/- in PB-2 for which he made a representation including representation qua wrong fixation of pension vide representation dated 07.09.2016 followed by reminder dated 21.10.2016. However the same was rejected by the respondents on 10.02.2017 etc. Vide letter dated 01.06.2017, in reply to RTI application, he was informed that his pension has already been fixed correctly and he was lastly replied on 10.02.2017. Same decision was reiterated vide letter dated 03.04.2018 that the benefit of the up-graded Grade Pay of Rs.5400/- cannot be given to the applicant. It is argued that very basis of rejection of claim of applicant is letter dated 11.02.2009, which became subject matter of W.P.(C) No.3035 of 2016 before the Hon'ble Delhi High Court and the Court had quashed it to the extent it states that the benefit of Up gradation of the post subsequent to the retirement would not be admissible to the pre-2006 pensions. Hence the O.A.

5. The learned counsel for applicant argued that pension of the applicant was to be fixed in terms of para 12 of Resolution dated 29.08.2008 which has been accepted by the Government, in terms of the fitment table attached with the circular. As per this, pension of the applicant, who was in the pay scale of Rs.7500-12000, was to be fixed at Rs.10770/- by taking into account Grade Pay of Rs.4800/-. However, his pension was fixed at Rs.10144/-, with a difference of Rs.626/-, thus without granting benefit of up-graded pay scale in terms of recommendations of the Pay Commission only on the basis of circular of the department of Pension and Pensioners

Welfare dated 11.02.2009, despite the same having been quashed by Court of law and as per said judgment pre-01.01.2006 retirees are also entitled to fixation of their pension by taking into consideration scale of the post from which they retired by fixing in proper Pay Band and Grade Pay i.e. Group 'B' officers who have rendered more than four years service before retirement, were held entitled to the Grade Pay of Rs.5400/- and in this manner by taking into consideration grade pay of Rs.5400/- of the applicant his pension should have been fixed at Rs.11070/- by taking into consideration his pre-revised pay scale of Rs.7500-12000, at the stage of Rs.9000/- on the date of his retirement and thus his pay band comes to Rs.16740/- + Grade Pay Rs.5400/- = Rs.22140/- and by taking into account its 50%, it comes to Rs.11070/-.

6. The respondents have filed a reply opposing the claim of the applicant. They submit that as per OM dated 11.2.2009, the applicant is not entitled to any relief. They submit that basic pay of Rs.9000 drawn by applicant in revised pay scale of Rs.7500-12000, as per 5th CPC has already been taken into consideration at the time of retirement, as per calculation sheet, Annexure R-1. The benefit of up-gradation of posts and grade pay of Rs.5400 would not be admissible to pre-2006 pensioner. Since applicant had retired on 31.3.1996, so he is not entitled for up-graded grade pay of Rs.5400/-, which is also in consonance with rules and instructions.

7. The applicant has filed a replication reiterating the submissions made in the O.A. and countering the averments made in the written statement filed by respondents. It is reiterated that when offending part of OM dated 11.2.2009 stands quashed, the same cannot be relied upon to reject the claim of the applicant.

8. We have heard the learned counsel for the parties at length and examined the material on file with their able assistance.

9. It is not in dispute that the entire case hinges around the instructions dated 11.2.2009 which states that the benefits of up-gradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners. It is also not in dispute that legality of this OM came to be considered in a number of cases including in Writ Petition © No. 3035/2016 titled **RAM PHAL VS. UNION OF INDIA & OTHERS**, which was decided on 3.8.2016 by Hon'ble Delhi High Court. The relevant observations made by the Court are reproduced as under :-

"24. It apparent that the respondents have not applied their mind while fixing the pension of the petitioner at `8701/- per month and it seems that the respondents have placed reliance upon the Office Memorandum dated February 11, 2009 and have placed the petitioner in the pay band S-12 but has not taken into consideration the subsequent up-gradation of the post of Subedar Major which would place the petitioner in pay band S-14, and needless to state the pension would also have to be revised accordingly.

25. We would also note that reliance placed on the Office Memorandum dated February 11, 2009 itself is misguided for the reason that Central Government SAG case was an appeal against the order of Central Administrative Tribunal dated November 01, 2011 wherein the Tribunal had set aside the Memorandum dated February 11, 2009. The decision rendered by the Division Bench of this court was also challenged before the Supreme Court but the same attained finality and quietus when the curative petition was dismissed on April 30, 2014. Needless to state the order dated February 10, 2016 having been passed subsequently, the respondents were duty bound to consider the case of the petitioner de hors the Memorandum dated February 11, 2009 and had the same been done, undoubtedly the petitioner would stand entitled to pension in sum of Rs. 9375/- per month as has been claimed by him.

26. We would also note that the present petition would also need to be allowed in the teeth of the recent Office Memorandum dated April 06, 2016 wherein it has been unambiguously stated that '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." On the same reasoning, the petitioner cannot be denied the benefit of revised pension when the respondents themselves have adopted the aforementioned position.

27. Resultantly, the present petition is allowed. The order dated February 10, 2016 is quashed and OM dated February 11, 2009 to the extent it states that the benefit of upgradation of post subsequent to the retirement would not be admissible to the pre-2006 pensioners is quashed and a mandamus is issued to the respondents directing them to fix the pension of the petitioner in sum of Rs.9375/- per month as given in the fitment table appended to the Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Pensioners Welfare Office Memorandum F.No. 38/40/12-P&PW (A) dated 28.01.2013 with effect from January 01, 2006. The petitioner would also be entitled to arrears of the pension as would be refixed by the respondents. The needful be done within a period of two months, failing which the

petitioner would also be entitled to simple interest @ 9% per annum.
There shall, however, be no order as to cost."

10. It is thus, clear, that the very basis of denial of claim of the applicant placed by respondents on OM dated 11.2.2009, stands quashed by the Hon'ble Delhi High Court, to the extent extracted above and as such the impugned orders, Annexures A-1 to A-3, based on such non-existence provision, cannot be sustained in the eyes of law.

11. In the wake of aforesaid discussion, this O.A. is partly allowed. Impugned orders, Annexure A-1 to A-3 are quashed and set aside. The respondents are directed to re-consider the claim of the applicant for grant of pension in view of decision taken by Hon'ble Delhi High Court in the case of Ram Phal (supra), and pass necessary orders within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

12. Pending M.A., if an, also stand disposed of accordingly.

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH
DATED: 20.09.2019

HC*