

X

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 12th DAY OF JUNE, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/00041/2017

J. Rajapushanam
No. 2, Khanmian Mettu Street
Palakkarai, Trichy – 620 021. ... Applicant

Vs.

1. Union of India represented by
The General Manager
Southern Railway
Chennai – 3.

2. The Divisional Security Commandant
Railway Protection Force
Trichchirappalli Division
Southern Railway, Trichy. ... Respondents

M/s Ratio Legis, for the applicant.

Mr. P. Srinivasan, for the respondents.

ORDER

(Pronounced by Hon'ble Mr. T Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"...to call for the records related to the impugned order No.SAXT/P.500/O.A.385/Pension/2016 dated 19.05.2016 issued by the 2nd respondent and to quash the same to the extent of affirming the fixation of basic pension with reference to PB 1 plus Grade Pay Rs.2800/- and further to direct the respondent to re-compute the basic pension of applicant's husband with reference to PB-2 (Rs.9300-34800) plus Grade Pay Rs.4200/- with the protected minimum of Rs.7145/- with effect from 01.01.2006 with all the consequential benefits & to accordingly fix family pension to the applicant and to make further order/orders as this Hon'ble Tribunal may deem fit and proper; and thus render justice."

2. The applicant is the wife of Late N. Jaganathan who retired on attaining the age of superannuation on 31.01.1992 while working as Sub Inspector Protection Force (SIPF). On implementation of the recommendations of the VI CPC, the pension of the applicant's husband was refixed at Rs.5650/- with reference to Railway Board's letters dated 8.9.2008 and 18.11.2008 wrongly reckoning the corresponding revised pay on the basis of the last pay drawn by him in PB-I with Grade Pay Rs.2800/- instead of PB-II with Grade Pay Rs.4200/- contrary to the principles laid down by the V CPC. Inasmuch as Rs.5500-9000 was revised as Pay Band-II with pay scale Rs.9300-34800 with Grade Pay Rs.4200/-, basic pension of the applicant's husband should have been fixed at not less than 50% of the minimum in PB-II (Rs.9300-34800) plus Grade Pay Rs.4200/- subject to a minimum of Rs.7145/- according to RBE.No.11/2013 dated 11.02.2013. Challenging the improper fixation of pension, the applicant's husband filed OA.386/2016 seeking a direction to the respondents to recompute his basic pension with reference to PB2(R.9300-

34800) plus Grade Pay Rs.4200/- with the protected minimum of Rs.7145/- w.e.f. 01.01.2006 with all consequential benefits wherein this Tribunal by order dated 23.03.2016 disposed of the OA directing the respondents to consider the representation of the applicant dated 02.08.2015 and pass a speaking order. Pursuant to the above order, the 2nd respondent has passed order dated 19.5.2016 rejecting the claim of the applicant, which is impugned in this OA.

3. The applicant has challenged the impugned order on the following grounds:

- i. The Railway Board's letter dated 15.01.1999 postulates that if the pension/family pension of all the pre-1996 retirees on revision/consolidation is less than 50%/30% of the minimum pay in the revised scales of pay introduced w.e.f. 01.01.1996 corresponding to the pay scale of the pay held at the time of retirement, the same shall be raised to 50%/30% of the minimum pay in the corresponding revised scales of pay, which has not been followed in the case of the applicant and hence the impugned order is liable to be set aside.
- ii. Denial of refixation of basic pension at not less than 50% of the minimum in PB 2 with the minimum protected at Rs.7145/- instead of Rs.5650/- w.e.f. 01.01.2006 is contrary to the OM dated 17.12.1998 of the DOP & PW ,according which, the pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.1996 of the 'post' last held by the pensioner which was later clarified by a letter



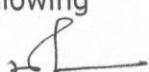
dated 11.05.2001 and upheld by the Hon'ble Supreme Court as 'scale of pay last held' and therefore, the impugned order is liable to be set aside.

iii. There could be only two classes of retired pensioners as pre 2006 retirees and post 2006 retirees pursuant to the implementation of the VI CPC recommendation w.e.f. 01.01.2006, the act of the respondents in further unravelling the pensioners class into pre 1986 retirees, pre 1996 retirees, pre 2006 retirees and post 2006 retirees is arbitrary and therefore non est in law.

iv. The aphorism in K.S. Krishnasamy's case is that both the letters dated 17.12.1998 and 11.05.2001 were ".....complimentary to each other" and ".....clarify the Government Policy Resolution dated 30.09.1997" as well did not contemplate for 'normal replacement scale of pay' and hence the impugned order is contrary to the dictum settled by the highest judicial forum and, therefore, impermissible in law.

v. The OMs dated 03.10.2008, 14.10.2008 and 11.02.2009 based on which the pre-1996 scale of pay Rs.1400-2300 was replaced with the normal replacement Pay Band Rs.5200-20200 with Grade Pay Rs.2800, instead of corresponding revised Pay Band Rs.9300-34800 with Grade Pay Rs.4200/- were set aside by the Full Bench of the Principal Bench in OA.655 of 2010 which was affirmed by the Hon'ble Delhi High Court and confirmed by the Hon'ble Supreme Court and consequently was implemented by the Government of India and hence the impugned order is non est in law and liable to be set aside.

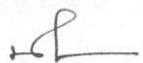
4. In support of his case, the applicant has relied upon the following



Orders/judgements:-

- (1) OA.436/2010 & 1327/2010 dated 31.10.2011 (R. Sedhumadhavan vs. UOI etc.).
- (2) Judgement of the Hon'ble High Court of Punjab and Haryana in CWP.8563 of 2014 dated 29.1.2015 (UOI vs. Darshan Lal Bali & Ors.) etc.,
- (3) C.A.T. Ernakulam Bench order in OA.1135/2013 dated.12.6.2015 (N.R. Purushothaman Pillai vs. Pay & Accounts Officer (Revenue & Ors.) etc.,
- (4) Judgement of the Hon'ble Supreme Court of India in Civil Appeal No.1123/2015 (Arising out of SLP © No.321 of 2015) dated 01.07.2015 (State of Rajasthan vs. Mahendra Nath Sharma)
- (5) CAT, Madras Bench order in OA.541/2014 dated 9.9.2015 (Azeezulla Baig vs. UOI & Anr.)
- (6) CAT Madras Bench order in OA.421/2013 dated 3.1.2017 (M. Natarajan vs. UOI & Ors.)
- (7) CAT Madras Bench order in OA. 350/2013 , OA 402/2013, OA 427/2013, 493/2013 and 494/2013.
- (8) Judgement of Hon'ble High Court of Madras in W.P.7909/2017 and WMP.No.8654 of 2017 dated 11.02.2019 (UOI rep. by Secretary, Department of Pension and Pensioner's Welfare, New Delhi & Ors. vs. Central Administrative Tribunal, Chennai Bench & Anr.

5. Per contra the respondents in their reply have stated that the Ministry of Personnel, Public Grievances & Pensions vide their OM dated 14.10.2008 circulated by Railway Board vide RBE No.181/2008 dated 18.11.2008 had issued a revised concordance table of the pre-1996, pre-2006 and post 2006 pay scales/pay bands to facilitate payment of revised pension/family pension in item No.9 of the Annexure I OM dated 14.10.2008 according to which, the scale of pay of Rs.1400-2300 has been revised to Rs.4500-125-7000 w.e.f. 01.01.1996 and the corresponding VI CPC Pay Bands/Scales PB-1 is Rs.5200-



20200 + Grade Pay Rs.2800. The pension and family pension is Rs.4000 and Rs.1500 respectively.

6. The Ministry of Personnel, Public Grievances & Pensions vide OM dated 28.01.2013 had issued a revised concordance table of the pre-1996, pre-2006 and post 2006 pay scales/pay bands indicating the pension/family pension for ordinary rates payable under the above provisions to facilitate payment of revised pension/family pension in item No.9 of the Annexure . It has been mentioned that the scale of pay of Rs.1400-40-1800-50-2300 has been revised to Rs.4500-125-7000 w.e.f. 01.01.1996 and the corresponding VI CPC Pay Bands/Scales is PB-1 Rs.5200-20200 + Grade Pay Rs.2800/-. The pension and family pension is Rs.5585/- and Rs.3500/- respectively.

7. On implementation of the 7th CPC, Ministry of Personnel, P.G. and Pensions, Department of Pension & Pensioner's Welfare vide their OM dated 06.07.2017 issued instructions for revision of pension/family pension w.e.f. 01.01.2016 in respect of civil pensioners/family pensioners who retired/died prior to 01.01.2006 and also issued a revised concordance table. In Table 9 it has been mentioned that the scale of pay of Rs.1400-40-1800-50-2300 has been revised to Rs.4500-125-7000 w.e.f. 01.01.1996, the corresponding VI CPC Pay Bands/Scales is PB-1 Rs.5200-20200 + Grade Pay Rs.2800 and the corresponding level in the 7th CPC is Level-5 (29200-92300). Hence the respondents pray for dismissal of the OA.

8. In support of their case, the respondents have relied upon the following orders/judgments:-

- (1) C.A.T. Madras Bench Order in OA.475 of 2011 and batch dated

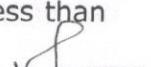


24.8.2014 (T.S. Padaleeswaran vs. UOI & Ors.).

(2) Judgement of the Hon'ble Supreme Court of India in Appeal (Civil) No.3174 of 2006 dated.23.11.2006 (K.S. Krishnaswamy etc., vs. UOI & Anr.,)

¶ Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

¶ Admittedly the Ministry of Personnel, Public Grievances & Pensions vide OM dated 14.10.2008 circulated by Railway Board in RBE No.181/2008 dated 18.11.2008 had issued a revised concordance table for the pre-1996, pre-2006 and post 2006 pay scales/pay bands to facilitate payment of revised pension/family pension in which the scale of pay of Rs.1400-2300 has been revised to Rs.4500-125-7000 w.e.f. 01.01.1996 and placed in PB-1 pay scale of Rs.5200-20200 + Grade Pay 2800 corresponding to VI CPC recommendation and fixed the pension and family pension at Rs.4000/-and Rs.3500/- respectively. Further the Ministry of Personnel, Public Grievances and Pensions vide OM dated 28.01.2013 had indicated the pension/family pension at ordinary rates payable under the above provisions to facilitate payment of revised pension/family pension. In Item 9 of Annexure , the scale of pay of Rs.1400-2300 has been revised to Rs.4500-7000 with effect from 01.01.1996 and the corresponding VI Pay Commission Pay Band is PB-1 in the Scale of Pay of Rs.5200-20200 + GP Rs.2800 and the pension and family pension is Rs.5585/- and Rs.3500/- respectively. Accordingly revised PPO had been issued by Sr.DFM/Trichy revising the pension of the husband of the applicant as Rs.5650/- + DR as per the instructions of the DOP&T and Railway Board. According to the applicant, the pension/family pension should not be less than



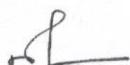
50%/30% of the minimum of pay in the corresponding scale of pay in V CPC pay scale last held in IV CPC and not the post last held. The Railway Board vide letter dated 24.11.2008 clarified that the benefit of upgraded scales applicable to employees who are in service as on 01.01.1996 cannot be extended to the pre-1996 pensioners. This has been reiterated in para 5 of the DOP&PW OM dated 11.2.2009 which reads as follows:-

"In accordance with the instructions contained in para 4.2 of this department's OM of even number dated 01.09.2008, the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Therefore, the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard.

10. This has further been clarified by the Railway Board vide letter dated 02.02.2010 with instructions to issue revised PPOs duly rectifying the error occurred in adopting higher scale of pay of Rs.5000-8000 instead of Rs.4500-7000. Para 1 of the said Railway Board letter dated 02.02.2010 reads as follows:

"It has come to their notice that some of the Zonal railways while revising pension/family pension of pre 1996 and pre-2006 retirees w.e.f. 01.01.2006 have incorrectly indicated the corresponding 5th CPC scale of pay and 6th P.C. Pay Band and grade pay in the revised PPOs particularly in the case of pre-revised 4th CPC scales of Rs.1400-2300. In this regard, it is reaffirmed that the scale of pay/pay band (grade pay) corresponding to IVth CPC scales of Rs.1400-2300 in Vth CPC and VIIth CPC is Rs.4500-7000 and Rs.5200-20200 (GP 2800) respectively, as has also been indicated in S.No.9 of Annexure-1 of Department of Pension and Pensioners' Welfare (DOP & PW OM dated 14.10.2008 circulated on the Railways vide this office letter of even No., dated 18.11.2008.

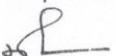
11. Based on the above clarifications, the pay of the applicant's husband had been revised taking into account his pay in the 6th CPC as PB-1 carrying the pay scale of Rs.5200-20200 + GP Rs.2800. As such, I am of the view that the pay of the applicant has been fixed correctly corresponding to the pre-revised pay scale from which the pensioner had retired. The benefit of upgradation of



posts subsequent to retirement would not be admissible to the pre-2006 pensioners. DOP&T is the nodal agency for all Central Government Ministries/Departments. Accordingly as per the instructions of DOP&PW dated 11.05.2001 the corresponding scale of pre-revised IV CPC of Rs.1400-2300 is Rs.4500-7000 in V CPC and PB I Rs.5200-20200 + GP Rs.2800 in VI CPC. Further the Ministry of Personnel, PG and Pensions, Department of Pension & Pensioners' Welfare vide OM dated 06.07.2017 issued instructions for revision of pension/family pension, according to which, the pension of pre-2016 pensioners/family pensioners may be revised w.e.f. 01.01.2016 in accordance with the instructions contained in the Department's OM dated 12.05.2017.

13. The Hon'ble Apex Court in the case of K.S. Krishnaswamy vs. Union of India & Anr. (C.A.No.3174/2006) has held that the view taken by the Madras High Court that the clarificatory Executive instructions in OM dated 11.05.2001 are an integral part of the OM dated 17.12.1998 clarifying the policy resolution of the Government dated 30.09.1997 and do not over ride the original OM dated 17.12.1998 is correct law and it is accordingly affirmed. The view taken by the Delhi High Court that the OM dated 11.05.2011 over rides the original OM dated 17.12.1998 and creates two classes of pensioners does not lay down the correct law and is hereby set aside. The thrust and crux in this Judgement is as to the merger of clarifications right from the date of issue of the original order. That far and no further. In the circumstances, the orders/Judgements relied upon by the applicant are not applicable to the facts of the present case.

14. The Principal Bench of this Tribunal vide order dated 01.11.2011 in OA.655/2010 had 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. The said order of this Tribunal was affirmed by the Hon'ble Delhi High Court and affirmed by the Hon'ble Apex Court. In pursuance of the above directions, the Department of Pension and Pensioner's Welfare vide OM dated 26.08.2014 had decided that the revised pension of members of Central Government SAG (S-29) pensioners Association will not be less than 50% of the sum of the minimum of pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised pay scale from which they had retired has to be arrived with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM dated 30.08.2008 as per which the replacement scale on implementation of the Pay Commission recommendation for the scale of Rs.1400-2300 is PB-1 (Rs.5200-20200) + GP Rs.2800.

15. In view of the above facts and circumstances of the case and the discussions here in above and the Judgement of the Hon'ble Supreme Court cited (supra), I do not find any illegality or infirmity in the impugned order dated 19.05.2016 passed by the second respondent warranting interference of this Tribunal. In the result, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.