

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00513/2018

Tuesday, this the 27th day of August, 2019.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

B. Subhagan, 74 years,
S/o. S. Balakrishnan (late)
Ex-G/108935, LDC, Ex-1353 GE (P)
Yastrik Project, Indian Army,
Residing at Mannelputhenveedu,
Pallikadavu, Clappana (P.O.),
Kollam District – 690 525.

- Applicant

[By Advocate Mr. Nirmal V. Nair]

Versus

1. Union of India represented by Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioner's Welfare, Lok Nayak Bhawan, New Delhi – 110 003.
 2. Deputy Controller Defence Accounts, Office of the Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad – 211 014.
 3. The Accounts Officer (Pension), Office of the Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad – 211 014.
 4. Senior Accounts Officer, Area Accounts Office, (Defence Accounts Department), Tirumala (P.O), Thiruvananthapuram – 695 006.
 5. Defence Pension Disbursing Officer, Prathiba Junction, Kadappakada, Kollam – 695 008.
- Respondents

[By Advocate : Mr. C.P. Ravikumar, ACGSC]

The application having been heard on 27.08.2019, the Tribunal on the same day delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member

This O.A is filed by Shri B. Subhagan, who is a pre-2006 pensioner is aggrieved by the refusal of the respondents 2 to 5 to grant him full pension and the arrears of pension with effect from 01.01.2006 as per Annexure A-1. He seeks the following reliefs:-

- “i) to declare that the applicant is entitled to be granted full pension and arrears of revised pension and allowances based on the full pension with effect from 01.01.2006 in accordance with Annexure A-1 and A-3 order with interest @ 12% per annum with effect from the date the amount fell due till the date of actual payment.*
- ii) To direct the respondents to grant the applicant full pension and arrears of revised pension based on the full pension with effect from 01.01. 2006 in accordance with Annexure A-1 and A-3 order with interest @ 12 % per annum with effect from the date the amount fell due till the date of actual payment.*
- iii) To declare that the applicant is entitled to have his revised basic pension fixed with effect from 01.01.2006 in accordance with the formulation stipulated in Annexure A-4 and as per the concordance table annexed to Annexure A-5 and to all consequential benefits including arrears of pension and allowances with interest @ 12% per with effect from the date the amount fell due till the date of actual payment.*
- iv) To direct the respondents to fix the revised basic pension of the applicant with effect from 01.01.2016 in accordance with the formulation stipulated in Annexure A-4 and as per the concordance table annexed to Annexure A-5 and to grant all consequential benefits including arrears of pension and allowances with interest @12% per with effect from the date the amount fell due till the date of actual payment.*
- v) grant such other reliefs as may be prayed for and the court may deem fit to grant.”*

2. Learned counsel for the applicant submits that the applicant is entitled to get half of the amount of the last pay drawn by him. The brief facts of the case are :

The applicant voluntarily retired from service with effect from 31.03.1989 after a qualifying service of 22 years and 5 months. The

applicant was entitled to a weightage of 5 years of qualifying service extended to those who retired voluntarily. Thus the applicant had a net qualifying service of 27 years and 5 months. At the time of his retirement, the applicant was drawing a pay of Rs. 1325/- in the pay scale of Rs. 950-1500/- (4th CPC pay scale). As per Rule 49 of the CCS (Pension) Rules, 1972, the applicant was not granted full pension as he did not have 33 years of qualifying service. Accordingly, the applicant's pay was fixed at Rs. 553/- and correspondingly revised and fixed as Rs. 1700/- with effect from 01.01.1996 in accordance with 5th Central Pay Commission was amended to the effect that all central government servants having a minimum qualifying service of 10 years or more shall be entitled to full pension. It is further stated that the applicant's pension had been revised and re-fixed in accordance with method specified in para 4.1 of the O.M dated 01.09.2008 by the respondents and applicants revised consolidated pension was Rs. 4842/- and subsequently, on the basis of the pro-rata reduction of pension which was later on enhanced to Rs. 3890/- and arrears has been paid to the applicant by the respondents as per the reply submitted by the respondents. The applicant has tried to impress this Tribunal by citing a statement which is quoted below:-

“Notional Full Pension as on the Date of Retirement

1. Last drawn pay : Rs. 1325/-
2. Full Pension : Rs. 663/- [50% of last drawn pay]

Notional Pension with effect from 01.01.1996 as per
recommendations of 5th CPC

1. Existing Pension : Rs. 663/-
2. 188% DA : Rs. 1246.44/-
3. 1st interim relief : Rs. 50/-
4. 2nd interim relief : Rs. 56/-
5. Total revised Pension with effect from 1.1.1996 (1+2+3) = Rs. 2015/-

Revised Consolidated Pension due to the applicant with effect from
1.1.2006 in accordance with Para 4.1 of Annexure A-2 O.M as well as

Annexure A-1 O.M

1. Existing Pension (EP) : Rs. 2015/-
2. Dearness Pension (DP) : Rs. 1007.50/-
3. 24% of EP + DP : Rs. 725.40/-
4. 40% of EP : Rs. 806.00
5. Revised consolidated pension (1+2+3+4) : **Rs. 4,554/-**

It is also submitted that the applicant should get the payment of Rs. 4554/- as per post 01.01.2006 by making his notional fixation of pensionary benefits. But, the respondents have not given the same to the applicant. Feeling aggrieved by this, he has made a representation which was not answered by the respondents. Thus, he has approached this Tribunal for redressal of his grievances.

3. Notices were issued and Mr. C.P. Ravikumar, learned ACGSC took notice on behalf of the respondents and filed a detailed reply statement.

4. He has drawn my attention to page 5 of the reply statement wherein it is stated that:

“i) The Pension fixation as per extant order as on 31.03.89:-

The applicant was granted pension as per extant orders i.e. CCS (Pension) Rules, 1972 viz., last pay drawn divided by 2 and multiplied by number of years service rendered plus weightage admissible (subject to maximum of 5 years) divided by maximum of 33 years i.e. 66 monthly periods. The applicant last pay drawn was Rs. 1325/- and had rendered 27 years, 5 months & 1 day service including 5 years weightage before proceeding on voluntary on 31.03.1989. Thus pension calculation is as under:-

Rs. $1325/2 \times (27 \times 2 + 1)/66$ = Rs. 553 with effect from 01.04.1989.

ii) The pension revision with effect from 01.01.1996 (V CPC):-

- i) Basic Pension - Rs. 553 (as on 31.12.1995)
- ii) Dearness Relief - Rs. 819 (148% as on 01.01.1996)
- iii) Interim relief I - Rs. 56
- iv) Interim relief II - Rs. 50
- v) Fitment weightage- Rs. 222 (40% of Basic Pension)
- Total - Rs. 1700/-

iii) The pension revision with effect from 01.01.2006 (VI CPC)

As per Para 4.1 of Annexure A-2, consolidation of existing pre-2006 pensioners with effect from 01.01.2006 would be adding together viz., existing basic pension plus Dearness Pension (50% of Basic Pension) plus Dearness Relief upto 24% of Basic pension plus Dearness Pension plus fitment weightage of 40% of existing basic pension.

Thus the pension fixation as on 01.01.2006 has been consolidated and fixed by the respondent being the PDA as under:-

i) Basic Pension	- Rs. 1700/- (as on 31.12.2005)
ii) Dearness Pension	- Rs. 850/- (50% of Basic pension)
iii) Dearness Relief	- Rs. 612/- (24% of BP + DP)
iv) Fitment weightage	- Rs. 680 (40% of Basic Pension)
Total	- Rs. 3842/-”

5. He has further stated that the benefit of re-fixation of the applicant was granted in accordance with the extant orders. The applicant's last pay drawn was Rs. 1325/- and had rendered 27 years and 5 months. He has further stated that the respondents have taken pension calculation as $1325/2 \times (27 \times 2 + 1) = \text{Rs.} 553/-$ and accordingly all arrears have been paid to the applicant, which is denied by the applicant. Learned counsel for the applicant submits that the Government has taken away the rate of pension by which simply 50% of the minimum of the basic salary, pay band and the Grade Pay should be taken into account.

6. Heard Mr. Nirmal V. Nair, learned counsel for the applicant and Mr. C.P. Ravikumar, learned ACGSC for the respondents. Heard both sides at length also and perused the records and appreciated the legal positions.

7. The short question raised by the applicant in the present original application is whether his pension has been re-fixed correctly or not by taking into account the latest direction by competent authority a person having less than 33 years of service is entitled for 50% minimum of pay in corresponding Pay Band or not?

8. The learned counsel has cited the O.M dated 06.04.2016, the relevant portion is extracted below:-

“5. In accordance with the order issued in implementation of

the recommendation of the 6th CPC, the pension of Government servants retired/retiring on or after 01.01.2006 has been delinked from qualifying service of 33 years. In O.A No. 715/2012 filed by Shri M.O. Inasu, a pre-2006 pensioner, Hon'ble CAT, Ernakulam Bench, vide its order dated 01.09.2008 would not be reduced based on the qualifying service of less than 33 years. The appeals filed by Department of Revenue in the Hon'ble High Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CAT/ High Court in several other cases also.

6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided 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. Accordingly, para 5 of this Department's OM of even number dated 28.01.2013 would stand deleted. The arrears of revised pension would be payable with effect from 01.01.2006."

Further he relied upon the Office Circular issued from the office of the Pr. Controller of Defence Accounts (Pensions) dated 08.04.2016 wherein clause 2 is quoted below:-

"(2) Now, GOI, Ministry of P, PG and Pension, Dept of P&PW have further issued order under their O.M No. 38/37/08 P& PW (A) dated 6th April, 2016, that "the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the sum of 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 annexed to Ministry of Finance, Department of Expenditure O.M No. 1/1/2008-IC dated 30th August, 2008 without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement". Accordingly, para 5 of the OM dated 28.01.2013 would stand deleted. The arrears of revised pension would be payable with effect from 01.01.2006."

9. Meaning thereby if an employee who is having less than 33 years of service, he is also entitled to refix his pension with pro-rata reduction of pension. Minimum of 50% of sum of pay in Pay Band and the Grade Pay whichever is applicable corresponding to the pre-revised pay scale as per fitment table.

10. In view of the above instruction in pursuance to the judicial decision, the Government of India has relaxed the conditions for qualifying service for pension.

11. Thus, this Tribunal is convinced that the applicant should have got @ Rs. 663/- as basic pension as on 01.01.2006 instead of Rs. 553/-. The O.A has merit and same is allowed with directions to the respondents to consider the applicant's case according to the latest guidelines as mentioned herein above by taking into account basic pension Rs. 663/- being 50% of the last pay drawn of Rs. 1325/- plus D.A interim relief payable on this amount.

12. This shall be done within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated, 27th August, 2019.)

(ASHISH KALIA)
JUDICIAL MEMBER

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Applicant's Annexures

- Annexure A1 - A true copy of O.M No. 38/37/08-P&PW(A) dated 06.04.2016 issued by the 1st respondent.
- Annexure A2 - A true copy of the O.M F.No. 38/37/08-P&PW(A) dated 01.09.2008 issued by the 1st respondent.
- Annexure A3 - A true copy of the circular No. C-149 dated 08.04.2016 issued by the 2nd respondent.
- Annexure A4 - A true copy of O.M. No. 38/37/2016-P&PW(A) dated 12.05.2017 issued by the 1st respondent.
- Annexure A5 - A true copy of O.M. No. 38/37/2016-P&PW(A) dated 06.07.2017 issued by the 1st respondent.
- Annexure A6 - A true copy of the representation dated 02.06.2017 submitted by the applicant.
- Annexure A7 - A true copy of the letter dated 26.07.2017 issued by the 5th respondent.
- Annexure A8 - A true copy of the request under the RTI Act dated 18.09.2017 submitted by the applicant before the PIO, office of the 5th respondent.
- Annexure A9 - A true copy of the letter No. AAO/DAD/TVM/RTI/V dated 03.10.2017 issued by the 4th respondent.
- Annexure A10 - A true copy of representation dated 10.10.2017 submitted before the 5th respondent.

Annexures of Respondents

- Annexure R1 - True copy of the circular No. 102 dated 11.02.2013.
- Annexure R2 - True copy of the pension statement for the period 2016-2017
- Annexure R3 - True copy of the pension payment order dated 20.04.2018
- Annexure R4 - True copy of the Revision pension order issued by the Principal Controller of Defence Accounts.
- Annexure R5 - True copy of the pensioner's profile
- Annexure R6 - True copy of the order dated 09.08.2018 issued by the 2nd respondent.
