

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/803/2016 & MA 358/2018

**Reserved on: 12.06.2019
Pronounced on: 13.06.2019**

Between:

M.R. Tagore, R/o.late M.B. Subba Rao,
Age: 73 yrs, Occ: Retired employee,
R/o. Plot No. 59, H. No. 42-267/1/1,
Sramik Nagar, Moula-Ali, Hyderabad – 500040.

... Applicant

And

1. The Union of India, Rep. by its
Secretary, Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Mumbai – 400 001.
2. The Joint Secretary,
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Mumbai – 400 001.
3. The Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
ECIL PO, Hyderabad – 500 062.
4. Department of Pension & Pensioners' Welfare,
M/o. Personnel, Public Grievances & Pensions,
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.

... Respondents

Counsel for the Applicant ... Mrs. Anita Swain

Counsel for the Respondents ... Mr. T. Sambasiva Rao,
Advocate for
Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for revision of pension of the applicant.
3. Applicant voluntarily retired from the respondents organisation on 31.5.2001. Basic pension was fixed as Rs.3355 based on the last pay drawn in the scale of Rs.5500-9000. Corresponding scale as per 6th CPC being Rs.9300-34,800, applicant claims that his pension has to be revised as Rs.3570. Applicant claims that his case is duly covered by the verdict of the Hon'ble Principal Bench of this Tribunal in OA 655/2010. Albeit, applicant represented to revise the pension on 2.5.2016, there being no response, OA has been filed.
4. Contentions of the applicant are that his basic pension was fixed based on proportionate service of 31 years and not based on the full service of 33 years. Para 4.1 and 4.2 of OM dated 1.9.2008 of Dept. of Pension and Pensioners' Welfare (DOP & PW) have to be followed in revising the pension.
5. Respondents, per contra, state that the consolidated pension of the applicant was revised as Rs.7583 based on instructions contained in DOP & PW Memo dated 1.9.2008, taking into consideration, his voluntary retirement in the scale of Rs.5500 - 9000 after rendering 31 years of service. Besides, as per OM dated 14.10.2008, the condition that the pension granted i.e. Rs.7583 should not be less than the minimum of the pay band plus the grade pay of the corresponding pre-revised scale, which works to Rs.7215, has been adhered to. The pension has been

revised from 1.1.2006 in consonance with the judicial pronouncements on the subject.

6. Heard both the counsel and perused the records placed on record.

7 (I) To resolve the dispute under examination, the recommendations of the 6th CPC, accepted by the Govt of India, vide resolution dated 29.8.2008, which have an intrinsic bearing on the present case, are extracted hereunder:

5.1.33

Linkage of full pension with 33 years qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn whichever is most beneficial to the retiring employee.

5.1.47

“all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of the 50% dearness allowance/ dearness relief as dearness pension respectively. The increase will be allowed by subsuming the effect of conversion of 50% of the dearness relief / dearness allowance as dearness pension/ dearness pay. Consequently, dearness relief at the rate of 74% on pension has been taken for the purposes of computing revised pension as on 1.1.2006. This is consistent with the fitment benefit being allowed in case of the existing employees.

The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than the 50% of the sum of the minimum of the pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised scale from which the pensioner had retired.”

(II) The above recommendations have been approved by the Cabinet and any changes in the same require ratification of the Cabinet of the Govt. of India. Hence, as on date, they are final as there is nothing on

record that a change has been brought about with the approval of the Cabinet.

(III) The applicant has put in 31 years of service and hence his pension has to be 50 percent of the last pay drawn. The last pay drawn as per respondents statement at page 18 of the OA is Rs.7250/-. 50% of Last pay drawn would then be Rs.3625, christened as 'basic pension'. For full pension, the requirement of 33 years of service has been dispensed with. This has been reiterated in OM No.38/37/08-P&PW(A) dated 06.04.2016 of DOP & PW. Instead of taking the basic pension as Rs.3625, respondents have made a mistake of working out the prorata pension for rendering a service of 31 years and worked it out as Rs.3355.

(IV) Now, applying clause 4.1 of O.M dated 1.9.2008 of DOP& PW, which gives the methodology of working out the pension, it would work out as under:

1. Last pay drawn is Rs.7250.
2. 50 percent of (1) is Rs.3625
3. Dearness pension (50 % of (2)) is Rs.1813
4. Dearness relief (24 percent of (2 +3)) is Rs.1305
5. Fitment weightage @ 40 percent of (2) is Rs 1450

Total works out to Rs.8193

To put the calculations simply, the formula given by the G.O.I vide Office Memorandum F. No. 38/37/08-P&PW(A) dated 01.09.2008 is to multiply fifty percent of the last pay drawn by the multiplication factor of 2.26. When done, the figure we arrive at is $(7250 \times 2.26)/2 = \text{Rs.8193}$.

As per clause 4.2 of the cited memo, the consolidated pension to be granted should not be less than fifty percent of the minimum of the pay band (Rs. 9300 - 34,800) plus the grade pay of Rs.4200 which works out to Rs.6750 [(9300+ 4200)/2 = Rs 6750]. The higher of the two worked out as per the clauses referred to shall be granted to the applicant which, in the present case, is Rs.8193. Even as per the concordance table appended to the memo dated 1.9.2008, indicates the pension to be granted as Rs.8194, taking the basic pension as Rs.3625. Respondents working out the pension based on 10 months average emoluments and then working out prorata pension is not as per rules, and hence irregular. Though the Tribunal appreciates the pains taken by the Respondents counsel to present a working sheet, but it is based on a wrong premise.

(V) Besides, the case is fully covered by the verdict of the Hon'ble Principal Bench of this Tribunal in OA 655/2010, which was upheld by the Hon'ble Supreme Court.

(VI) Hence, based on the facts narrated above, the respondents have failed to act as per norms prescribed on the subject, from time to time. Their decision is against the principles laid down by the higher judicial forums, which dealt with the subject extensively. This Tribunal has allowed similar such cases in OA 518/2015 & batch. Therefore, the matter has attained finality in its full glory. Therefore, the respondents are directed to consider as under:

- i) To revise the pension of the applicant taking basic as Rs.3625 as expounded above, as per the 6th CPC recommendations and the different OMs cited supra.

- ii) However, as observed by a Division Bench of this Tribunal in OA No.518/2015 & Batch, arrears of pension will be paid for a period of 3 years prior to the filing of the OA i.e. 2013, 2014 & 2015 as per para 5 of the verdict of the Hon'ble Supreme Court in CA No. 5151 of 2008 – 5152 of 2008 in Union of India & Others Vs. Tarsem Singh.
- iii) Time allowed to implement the order is 6 months from the date of receipt of this order, considering the fact that respondents have processed the case and seek approval at different levels.
- iv) With the above directions the OA is allowed. MA 358/2018 stands disposed.
- v) No order to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 13th day of June, 2019

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