

**Central Administrative Tribunal
Madras Bench**

OA/310/01744/2017

Dated the 11th day of October Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

D.Sivagurunathan,
No.5/240, 6th Main Road,
Otteri Extension,
Vandalur,
Chennai 600 048.
By Advocate **M/s.S.Arun**

.. Applicant

Vs.

1. Union of India, rep. by
Chief Postmaster General,
O/o the Chief Postmaster General,
Chennai 600 002.
 2. The Senior Superintendent of Post Offices,
Chennai City North Division,
Chennai 600 008.
- .. Respondents

By Adovacte **Dr.G.Krishnamurthy**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“.....to set aside the Order dated 25.9.2017 issued by the 2nd respondent and consequently direct the respondents to revise his pension at the rate of 50% of the minimum of the pay in the pay band and grade pay corresponding to the pre-revised pay scale of Postman which comes to around Rs.4,030/- per month after taking into account the upgradation of pay effect w.e.f. 01.1.2006 in the post of Postman, alongwith reference to the fitment table annexed to the M/o Finance, Department of Expenditure, OM No.1/1/2008-IC dated 30.8.2008 including arrears of pension and other terminal benefits with interest at the rate of 12% per annum till the date of actual payment and pass such other orders as are necessary to meet the ends of justice.”

2. The brief facts leading to filing of this case is that the applicant is a retired Postman of the Department of Posts. He was appointed as Postman in the Department of Posts in the year 1969. After serving the department for 18 years, he was compulsorily retired from service on 09.2.1987. After retirement he was sanctioned pension and other terminal benefits by the competent authority and the same was revised periodically as admissible to him as per the prevailing relevant rules.

3. Whiles, the Department of Pension and Pensioner's Welfare issued OM dated 06.4.2016 extending the benefits available to pre-2006 pensioners under para 4.2 of the OM dated 01.9.08 of the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioner's Welfare. According to para 4.2 of the said

OM dated 01.9.08, 'revision of pension to pre-2006 pensioners should not be lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the concerned pensioner retired". As such the pension of the applicant has to be calculated at the rate of 50% of the minimum of the pay in the PB and GP corresponding to the pre-revised pay scale of Postman which will come to around Rs.4,030/- per month w.e.f. 01.1.2006 in the post of Postman, alongwith reference to the fitment table annexed to the M/o Finance, Department of Expenditure, OM No.1/1/2008-IC dated 30.8.2008 including arrears of pension and other terminal benefits with interest at the rate of 12% per annum till the date of actual payment. Therefore, the applicant made Annexure A4 representation dated 14.9.2017 for revision of his pension and DA at the rate of Rs.4,030 per month w.e.f. 01.1.06 along with payment of arrears of pension and DA. The grievance of the applicant is that the 2nd respondent, by Annexure A5 impugned order dated 25.9.2017 rejected the claim of the applicant stating that the said benefit will not be applicable in the case of revision of pension/family pension in respect of the pensioners who were in receipt of compulsory retirement pension and compassionate allowance under Rule 40 and 41 of CCS (Pension) Rules, 1972. Aggrieved by this, he filed this OA before this Tribunal seeking the aforesaid relief.

4. The respondents have entered appearance and filed a detailed reply statement contesting the claim of the applicant stating that the applicant retired from service under compulsory retirement. As per Rule 40 Sub-Rule (1), a government servant

compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. The applicant had been awarded compulsory retirement pension of Rs.375/- w.e.f. 11.2.87 and it was revised from time to time and at present he is drawing an amount of Rs.9000/-. His pension had been revised as per instructions contained in the OM dated 22.7.2011 issued by the Department of Pension & Pensioners' Welfare and the benefit of para 4.2 of the Department of Pension and Pensioners' Welfare OM dated 1.9.08 will not be applicable in the case of revision of pension/family pension in respect of pensioners who were in receipt of compulsory retirement pension and compassionate allowance under Rules 40 and 41 of CCS (Pension) Rules, 1972. Thus, the revision of pension as well as payment of interest at the rate of 12% per annum on the arrears of pension does not arise in this case and they prayed for dismissal of the OA.

5. When the matter is taken up for hearing, learned counsel for the applicant submits that the issue involved in this OA is covered by the judgments passed by the Hon'ble Kerala High Court in OP (CAT) No.2/2016(Z) dated 07.1.2016 arising out of the orders passed by the Ernakulam Bench of this Tribunal in a similar issue in OA 207/12 dated 16.1.2015 and OP (CAT) No.108/2016(Z) dated 26.5.2016. The Hon'ble Kerala High Court dismissed the OPs thereby and confirmed the order of the

Ernakulam Bench. The SLP filed before the Hon'ble Supreme Court was also dismissed on 06.9.2019. The applicant being similarly placed could not be denied the same benefits and, therefore, the applicant would be satisfied if a similar order is passed in this case also.

6. Heard both. A careful reading of the judgments of the Hon'ble Kerala High Court in OP (CAT) No.2/2016(Z) dated 07.1.2016 and OP (CAT) No.108/2016(Z) dated 26.5.2016 would show that the very same issue had been dealt with in depth.

The relevant portions of the said judgments is extracted as under:

“It is evident from a reading of Rule 40 that except in cases where an order is passed in consultation with the Union Public Service Commission, a pensioner governed by the said rule is entitled to full compensation pension. In the case of the respondent, though he was compulsorily retired from service pursuant to the initiation of disciplinary proceedings, an order reducing his pension in consultation with the Union Public Service Commission was not passed when he was compulsorily retired from service. Subsequently also, an order reducing his pension has not been passed. In such circumstances, we are in agreement with the Central Administrative Tribunal that Annexure A6 cannot be relied on to hold that the respondent is not entitled to the benefit of stepping up of pension to 50% of the minimum pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which he had retired. Though learned Assistant Solicitor General of India appearing for the petitioners contended, relying on paragraph 2.1 of Annexure A2 Office Memorandum dated 1.9.2008 that the recommendations of the Sixth Central Pay Commission applied only to pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules, that the

respondent was drawing only compulsory retirement pension and not pension, he is not entitled to the reliefs prayed for before the Tribunal. We are afraid, the said contention is without any merit. The Central Civil Services (Pension) Rules, 1972 contemplates grant of various types of pensions and one such is compulsory retirement pension. The petitioners have no case that the service conditions of the respondent are not governed by the above rules. All that the Government of India meant when it is stated in paragraph 2.1 of Annexure A2 Office Memorandum that it applies to all pensioners/family pension) Rules, is that the pensioner must be a person governed by the provisions contained in the CCS (Pension) Rules, 1972. The Government of India did not make a distinction between persons drawing different types of pensions under the CCS (Pension) Rules, 1972. We therefore find no merit in the said contention as well.

We accordingly hold that there is no merit in the instant original petition. It fails and is dismissed.”

In ***Director of Accounts (Postal), Kerala Circle & Others v. N.Karthikeyan Pillai, Postal Assistant (Retd.) reported in CDJ 2016 Ker HC 1149***, the Division Bench of Hon'ble Kerala High Court has observed as follows:-

“This Court is not much impressed with the said submission in so far as scope of the said OM dated 22.7.2011 in relation to Rule 40 of the CCS (Pension) Rules had already come up for consideration before this Court almost under similar circumstances in OP (CAT) No.2/2016, which arose from OA No.207/2012 of the Central Administrative Tribunal, Ernakulam Bench. There also, the main contention was whether any proportionate deduction could have been made from the minimum pension payable at a level of 50% of the basic pay. Minimum pension was denied to the applicant therein in view of Annexure R1 OM dated 22.7.2011 issued by the Ministry of Personnel, Public Grievance and Pension, also with reference to Rule 40 of the CCS (Pension) Rules. After hearing both the

sides, another Bench of this Court made it clear in unequivocal terms, as per judgment dated 7.1.2016, that the Government of India meant, when it stated in paragraph 2.1 of Office Memorandum dated 1.9.2008, that it applied to all pensioners/family pensioners under CCS (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules and the Government did not make a distinction to have the version of the Department to be accepted, to deny the benefit to the applicant. It was accordingly observed that, there was no merit in the Original Petition and the same was dismissed. We find that the issue involved herein is such, there is no merit in the Original Petition and the same is dismissed in terms of the judgment 7.1.2016 in OP (CAT) No.2/2016.”

7. On a perusal, it is clear that the OM dated 22.7.2011 will come into effect only when there is a reduction of pension to concerned compulsorily retired employee at the time of his retirement after consultation with the UPSC. In the instant case, no such reduction of pension is ordered by the competent authority after consultation with the UPSC. The respondents have no case that the service conditions of the applicant is not governed by CCS (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules. There is no distinction between persons drawing different types of pensions under CCS (Pension) Rules, 1972. Hence, the OA on hand is identical to the one cited supra and the judgments made in the above cases are binding on the issue on hand. Following the same ratio, the present OA is also disposed off with the following directions without expressing any different views:-

“The impugned order dated 25.9.2017 issued by the 2nd respondent is set aside. The respondents are directed to consider the matter afresh in the light of the law laid down by the Hon'ble Kerala High Court in OP (CAT) No.2/2016(Z) dated

07.1.2016 and OP (CAT) No.108/2016(Z) dated 26.5.2016 (Annexure A7 & A8) and revise the pension of the applicant including arrears of pension and other benefits flowing therefrom within a period of three months from the date of receipt of a copy of this order. The OA is allowed. No costs.”

(T.Jacob)
Member(A)

11.10.2019

(P.Madhavan)
Member(J)

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