

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

Original Application No.21/1138/2018

**Reserved on: 08.11.2019
Pronounced on: 15.11.2019**

Between:

K.L. Narasimham, S/o. late Krishna Murthy,
Aged 91 years, Retired Director of Accounts & Budget,
Andaman & Nicobar Islands Administration,
R/o. 5-9-22/30, Adarsh Nagar, Hyderabad – 500 063
(Group 'A' Officer)

... Applicant

And

The Union of India, Rep. by:

1. The Finance Secretary & Chief Pay & Accounts Officer,
Andaman & Nicobar Islands Administration,
Port Blair – 744 101.

2. The Secretary to Govt. of India,
Ministry of Home Affairs,
Central Secretariat, New Delhi – 110 001.

3. The Secretary to Govt. of India,
Ministry of P., PG & Pensions,
Department of Pensions & Pensioners' Welfare,
Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.

... Respondents

Counsel for the Applicant ... Mr. E. Krishna Swamy

Counsel for the Respondents ... Mr. Jose Kollanur, Advocate for
Mr. T. Hanumantha Reddy,
Sr. PC for CG

CORAM:

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

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed against the order No. 737, dated 07.02.2018 issued by the Office of the Chief Pay & Accounts Officer in Andaman & Nicobar Administration fixing notional pay at Rs.58,600/- for purpose of determining the basic pension payable to the applicant from 01.01.2016 and the PPO dated 04/15.05.2018 fixing his basis pension as Rs.29,300/- from 01.01.2016 as per the recommendations the VII CPC.

3. Brief facts of the case are that the applicant joined service as Upper Division Clerk in 1952. Eventually, he was promoted as Accounts Officer in the Indian Audit and Accounts Department on 03.11.1972. Thereafter, in the year 1981, he proceeded on deputation to the Directorate of Education, Andaman & Nicobar Islands Administration, Port Blair. He was posted to hold the charge of post of Director of Accounts & Budget until further orders on 31.12.1982. Pay of the applicant was fixed at Rs.3100 in the pay scale of Rs.3000-4500 on 18.01.1988. The Ministry of Home Affairs clarified that applicant may be considered for appointment as Director of Accounts and Budget on deputation vide letter dated 25.08.1983. Consequently, the services of the applicant were utilized as Director of Accounts and Budget. In fact, his services in the said post were extended by two months from 31.07.1985 after his retirement on 30.07.1985. Thereafter, he was also re-employed in the post of Director of Accounts & Budget and he was relieved of his duties in the said post on 01.04.1986.

As per CCS (Pension) Rules, 1972, applicant is entitled to basic pension of Rs.12,600/- p.m. w.e.f. 01.01.2006 and Rs.33850/- w.e.f. 01.01.2016, whereas he was authorized and paid Rs.11,300/- w.e.f. 01.01.2006 and Rs.29,300/- w.e.f. 01.01.2016. He was also entitled for additional pension at the rate of 20% from July, 2007; 30% from July 2012 and 40% from July 2017. Pension of the applicant has to be determined based on the authorization given for payment by the Andaman & Nicobar Islands Administration. Denial of legitimate entitled pension to the applicant has led to the filing of the present OA.

4. The contentions of the applicant are that the respondents are duty bound to abide by the Department of Pension & Pensioners' Welfare guidelines stipulated in OM dated 10.02.1998 along with its corrigendum dt. 20.04.1998; OM dt. 13.05.1998 and 17.12.1998 in regard to revision of pension of pre-01.01.1986 pensioners. Pension is also to be fixed as per the Resolution dt. 29.08.2008 wherein it was stipulated that in no case pension shall be lower than 50% of the sum of the minimum pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Revision of pension of the applicant has to be in accordance with OM dt. 12.05.2017 and 23.05.2017. Applicant was paid consolidated pension of Rs.11,300/- w.e.f. 01.01.2006. However, corresponding scale of pay of Rs.10,000 – 15,200 (V CPC) in the VI CPCP was in PB-3 i.e. Rs15600 – 39100 with Grade Pay of Rs.6,600/-. The minimum pay of the post w.e.f. 01.01.2006 was Rs.25,200/-. The minimum pension at 50% of Rs.25,200/- is Rs.12,600/- whereas applicant was authorized and paid a

basic pension of Rs.11,300/-, a short fall of Rs.1,300/- in basic pension w.e.f. 01.01.2006 to 31.12.2015. Arrears of pension with DR from time to time and additional pension claimed by the applicant works out to Rs.2,89,518/-. Similarly, when it comes to the VII CPC, notional pay of the applicant on 01.01.2016 is Rs.67,700/- and his pension is to regulated at Rs.33,850/- with additional pension and DR from time to time. However, respondents have authorized basic pension of Rs.29,300/- with a shortfall of Rs.4550/- in the basic pension w.e.f. 01.01.2016 as per the PPO dt. 04/14-05-2018. The arrears of pension payable from 01.01.2016 to 31.12.2018 works out to Rs.2,39,004/-. Respondents denying the legitimate pension is violative of Articles 14, 16, 21 and 300-A of the Constitution.

5. Respondents in their reply statement state that since the applicant served and retired from Government service at Port Blair, this OA has to be decided on the grounds of territorial jurisdiction. Though the applicant was appointed as Director of Accounts & Budget, Andaman & Nicobar Islands Administration, he retained his pay of substantive post i.e. Accounts Officer opting for deputation allowance of 20% as per the Order No. 392, dated 26.10.1983. As the applicant retained the pay of the post of Accounts Officer till retirement, his pension has been revised with reference to the corresponding notional pay of the Accounts Officer as per the concordance table published by the Dept. of Pension & Pensioners' Welfare dt. 06.07.2017. As per the OM dt. 28.01.2013 of the DOP&PW, pension of pre-2006 pensioners would be stepped up to 50% of the sum of minimum of pay in the pay band and grade pay

corresponding to the pre-revised pay scale from which the pensioner had retired. Further, as per OM dt. 12.05.2017 of DOP & PW, revised pension/ family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/ family pensioners, who retired prior to 01.01.2016 shall be revised by notionally fixing their pay in the pay matrix recommended by the VII CPC in the level corresponding to the pay in the pay scale/ pay band and grade pay at which they retired. Further, the DOP & PW issued OM dt. 17.12.1998 explicitly stating that the revision of pension w.e.f. 01.01.1996 should not be less than 50% of the minimum of the revised scale of pay of the post last held by the pensioner. Therefore, the pension of the applicant was fixed at Rs.5000/- w.e.f. 01.01.1996. However, vide OM dt. 28.01.2013 & 12.05.2017 of the DOP & PW revision of pension w.e.f. 01.01.2006 & 01.01.2016 respectively is to be revised with reference to the scale of pay in which the pensioner retired. Accordingly, pension of the applicant was revised with reference to scale of pay in which his last pay and allowances were drawn i.e. basic pay of Rs.3125/- in pay scale of Rs.2375-3500 and pension authorized at Rs.11,300/- and Rs.29,300/- w.e.f. 01.01.2006 and 01.01.2016 respectively. In view of this, OA does not deserve any merit and hence, has to be dismissed as per the version of the respondents.

Applicant filed rejoinder wherein he states that since applicant is residing at Hyderabad after retirement, he has filed the case in the Hyderabad Bench of the Tribunal. Therefore, question of territorial jurisdiction not being complied does not arise. Applicant was allowed to continue in the post of Director of Accounts & Budget w.e.f. 31.12.1982

on adhoc basis with the concurrence of the Ministry of Home Affairs vide letter dated 25.08.1983. The services of the applicant were extended after retirement up to 31.03.1986 and taking this into consideration, the Andaman & Nicobar Administration regulated the pay and allowances of the applicant and that the respondent administration (parent employer) did not regulate or authorize his pensionary benefits. Main contention of the applicant is that having utilized his services in higher post of Director of Accounts & Budget from 31.12.1982 till his retirement on 31.07.1985, it is not proper on the part of the respondents in not granting him pension accordingly. Applicant cited the judgments of the Hon'ble Supreme Court Deokinandan Prasad Vs. State of Bihar & Ors; D.S. Nakara's case – AIR 1983 SC 130; Smt. Poonamal etc. Vs. Union of India – AIR 1985 SC 1196; Smt. Bhagwanti Vs. Union of India – AIR 1989 SC 2088, in support of his contention. Besides, D.S. Nakara's case was relied upon by the Hon'ble High Court of Andhra Pradesh in W.P. Nos. 16719 and 18490 of 2013 – The Principal Secretary to Government of Andhra Pradesh Vs. Andhra Pradesh Pensioners' Samaj and ordered payment of arrears of pension from 25.05.1998 to those who retired before that date. The orders of the Hon'ble High Court of A.P. were upheld by the Hon'ble Supreme Court on 30.04.2014 and implemented by the State of Andhra Pradesh. Applicant is an existing pensioner, who has been denied eligible pension from 01.01.2006 to 31.12.2015 and w.e.f. 01.01.2016. Applicant contends that the observation of the Hon'ble Supreme Court in Union of India & Ors Vs. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008 is not valid judicial precedent for payment of arrears of pension and is limited to that case only.

6. Heard both sides counsel and perused the pleadings and the material on record. As the applicant settled down at Hyderabad after his retirement, he comes within the jurisdiction of this Tribunal. As such, the OA was taken up adjudication.

7(I) Applicant while working in the respondents organization has gone on deputation as Director of Accounts & Budget, Andaman & Nicobar Administration. While working in the said position, he has retired. While regulating his pension, respondents have fixed the pension at a level lower than what has been expected. Hence, in order to resolve the dispute, brief history of the applicant is traced as under:

The scale of the pay of the applicant from time to time is as under:

| 4 th CPC | 5 th CPC | 6 th CPC | 7 th CPC |
|---------------------|---------------------|---|------------------------------------|
| 3,000-4,500 | 10,000-15,200 | PB-3: 15600- 39100/- with Grade Pay of Rs.6600/- | 67,700/- Notional pay matrix |

The main principle in fixing pension is that it should be 50% of the last pay drawn.

Pay is defined under FR 9 (21) (a) (i) as under:

“(a) Pay means the amount drawn monthly by a Government servant as –

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre:..

(emphasis applied)

As can be seen from the definition, “pay” means the amount drawn monthly by employee even in an officiating capacity. Rule 49(2) of CCS

(Pension) Rules, 1972 explains the amount of pension to be granted to a pensioner. Rule 49(2) reads as under:

“49. Amount of Pension.

(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of forty-five thousand rupees per mensem.”

“**Emoluments**” is defined under Rule 33 of CCS (Pension) Rules, 1972 as under:

“The expression ‘emoluments’ means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice.”

Further, DOP & PW issued Orders 17.12.1998 to the effect that w.e.f. 1.1.1996, 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. 1.1.1996 of the post held by the pensioner. Further, Govt. Resolution dt. 29.08.2008 accepting the recommendations of the VI CPC makes it clear that pension, in no case, shall be lower 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 the pensioner had retired. The 7th CPC has come with levels, but the formula for fixation of pension cited continues.

Thus, as per the cited Rules, though, as claimed by the respondents, the applicant has retained his pay in substantive post of Accounts Officer, yet, while fixing pension, the officiating pay of the applicant on the date of retirement has to be necessarily considered.

Further, as per the recommendations of the VI & VII CPC, pension has to be 50% of the last pay drawn. As per the Order dt. 18.01.1988 of the Andaman & Nicobar Administration, the pay of the applicant was fixed as Rs.3100/- in the scale of pay of Rs.3000-4500 less pension. On 17.03.1999, Andaman & Nicobar Administration considered the consolidated basic pension of the applicant as Rs.5,000/-. As per the DoP&PW OM dated 10.02.1998 read with Corrigendum dt. 20.04.1998, OM's dt. 13.5.998 and 17.12.1998, in regard to revision of pension of pre-01.01.1986 pensioners,

“Government has, inter alia, accepted the recommendation of Fifth Central Pay Commission to the effect that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees and thereafter for the purpose of consolidation of their pension/ family pension as on 1.1.1986, they may be treated alike those who have retired on or after 1.1.1986. Accordingly, pay of all those Government servants who retired prior to 1.1.1986 and were in receipt of pension as on 1.1.1986 and also in cases of those Central Government employees who died prior to 1.1.1986, in respect of whom family pension was being paid on 1.1.1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner, at the time of retirement or on the date of death of Government employee, introduced subsequent to retirement/ death of Government employee consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or of award of Board of Arbitration or judgment of Court or due to general revision of the scale of pay for the post, etc.”

Thus, it is clear from the above observation that pension has to be fixed based on the pay of the post held by the pensioner at the time of retirement. Further, in the same OM, it is mentioned that

“the pension so calculated shall be consolidated as on 1st January, 1996 in accordance with the provisions contained in paragraph 4.1 of this Department's OM No. 45/86/97-P & PW (A)-Pt.II, dated the 27th October, 1997. Such consolidated full pension shall not, however, be less than 50 per cent of the minimum of the revised scale of pay introduced with effect from 1st January, 1996 for the post last held by the concerned pensioner.”

This clause is supportive of the contentions made by the applicant. Besides, DoP&PW issued orders on 17.12.1998 which states that

"The President is now pleased to decide that w.e.f. 1.1.1996, 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. 1.1.1996 of the post last held by the pensioner."

As can be seen from the above observation, the emphasis is on the last post held by the pensioner. Government resolution dt.29.08.2008, in para 12 it says that

"The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty per cent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired."

This recommendation of the VI CPC was accepted with the modification that the fixation of pension shall be based on a multiplication factor of 1.86, i.e. basic pension plus Dearness pension (wherever applicable) plus Dearness Relief of 24% as on 1.1.2006, instead of 1.74.

Government of India, DoP & PW OM dt. 23.05.2017, states that

"The Ministries/ Departments of the Central Government are aware of the orders issued by Department of Pension and Pensioners' Welfare (DoP & PW) contained in their OM No. 38/37/2016-P&PW(A), dated 12.5.2017 regarding revision of pension of pre-1.1.2016 retirees. In terms of Para 4 thereof, the revised pension/ family pension with effect from 1.1.2016 in respect of all Central Civil pensioners/ family pensioners, including CAPFs who retired/ died prior to 1.1.2016 may be revised by notionally fixing their pay in the Pay Matrix recommended by the 7th Central Pay Commission in the level corresponding to the pay in the pay scale / Pay Band and Grade Pay at which they retired/ died. The said OM further provides that this will be done by notional pay fixation under each intervening Pay Commission based on the formula for revision of pay. 50% of the notional pay as on 1.1.2016 shall be the revised pension and 30% of this notional pay shall be the revised family pension with effect from 1.1.2016."

Thus, the above OM dt. 23.5.2017 makes it clear that pension has to be fixed notionally under each intervening Pay Commission based on

the formula for revision of pay. This aspect has to be necessarily considered by the respondents. It is well settled law that pension is a property as envisaged in Article 300-A of the Constitution of India. It is also well laid down through different rulings of the Apex Court including the Constitution Bench of the Apex Court in **D.S.Nakara & Ors. V. Union of India – (1983) 1 SCC 305** that the pension of the pensioner cannot be lightly treated and that any rules relating to the pension has to undergo the interpretative process of the provisions of Part IV of the Constitution. It is also settled position that pension is not a bounty but a right of a Government servant [see **State of Kerala & Ors. V. M. Padmanabhan Nair – (1985) 1 SCC 429; Dr. Uma Agrawal v. State of U.P. & Anr. – (1999) 3 SCC 438**]. Pension has been given a constitutional recognition, including the term 'pension' in the definition clause under Article 366 (17) of the Constitution of India. In **State of Jharkhand & Ors. V. Jitendra Kumar Srivastava & Anr. = (2013) 12 SCC 210**, the Apex Court held that pension is a constitutional right as it comes within the meaning of 'property' the right to which earlier was a fundamental right protected under Articles 19(1)(f) and 31(1) of the Constitution of India. The Apex Court in **State of West Bengal v. Haresh C. Banerjee & ors.- (2006) 7 SCC 651** held that even after the repeal of Articles 19(1)(f) and 31(1) of the Constitution, pension remains a constitutional right under Article 300-A of the Constitution. In **D.S.Nakara & Ors. v. Union of India – (1983) 1 SCC 305** – which is a *locus classicus* – the Apex Court held that the discernible purpose underlying the pension scheme or a statute introducing the pension scheme must inform interpretative process on the touchstone of directive

principles of State policy contained in Articles 38(1), 39(d)(e), 41 and 42 in the light of the preamble of the Constitution which guarantees the dignity of the individuals. It was also observed by the Constitution Bench that Article 41 obligates the State within the limits of its economic capacity and development to make effective provision for securing the right to work, education and to provide assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want. As held by the Apex Court, pension is a Constitutional right of the pensioner and it cannot be lightly interfered with. In certain other cases like family pension the apex court has held that it is a fundamental right of the family pensioner under Article 21 of the Constitution and hence the pension matters cannot be dealt with in a casual manner or in a manner not in accordance with the provisions of the Constitution of India.

Near home, a Full Bench of the Hon'ble High Court of Andhra Pradesh in Writ petition Nos.22042, 24191, 24308, 24324 and 24325 of 2003 in the Principal Accountant General, Andhra Pradesh & and ors vs. C. Subba Rao, has held as under:

“Pension is invisible accumulated savings of a Government servant while in service. It is not paid as gratis or a bounty. A Government servant earns pension while discharging the functions as a Government servant. It is, however, not subject to whims and fancies of the Government nor arbitrary grant of monthly post retiral payment. Every Government servant who attains the age of superannuation - unless it is withheld as a measure of punishment; is entitled for pension after retirement at a rate prescribed by Rules and Regulations. Generally, the amount of pension is fixed taking into consideration the emoluments paid to a Government servant in the last year or part of last year of his service as such Government servant.”

II. The respondents need to know that as per Fundamental Rules cited above, pension of the applicant has to be fixed based on the pay last drawn by the applicant even if it is officiating pay. The VI and VII CPCs have elaborately given guidelines in regard to fixation of pension as brought out in the above paragraphs. Therefore, the relief sought for by the applicant is in accordance with the Government of India guidelines and also in tune with the observations of the Hon'ble Supreme Court in the cases cited above. It is also not proper on the part of the respondents in not allowing pension which has to be drawn for the applicant based on a higher post in which he worked at the time of retirement. Not doing so will not only be unfair, but it does not speak well about the respondents who are expected to be model employer. Making the applicant work in a higher post and discharge higher responsibilities but denying consequential pension is not in the realm of logic. In simple terms, the decision is arbitrary and illegal.

III. Applicant contends that the judgment of the Hon'ble Supreme Court in Union of India & Ors vs. Tarsem Singh is not applicable to him. However, in the said judgment, Hon'ble Supreme Court has observed as under:

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also,

and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored.”

IV. In view of the above, the contention of the applicant that the above judgment is not applicable is not acceptable. Applicant retired in 1985 and filed this OA in 2018 seeking relief from 2006 onwards. Hon'ble Supreme Court has made it clear that arrears for such long period are not to be entertained as per the judgment cited supra. Therefore, arrears payable to the applicant need to be restricted to 3 years prior to filing the OA.

V. Hence, in view of the above, the respondents are directed to consider as under:

(i) to revise the pension of the applicant w.e.f. 01.01.2006 as per the accepted recommendations of the VI & VII Central Pay Commissions and the OMs referred to by taking into consideration the

last pay drawn by the applicant as Director of Accounts & Budget, Andaman & Nicobar Administration.

- (ii) Respondents to work out and re-fix the pension as ordered at
 - (i) above and arrears of pension be confined to 3 years from the date of filing of the OA.
- (iii) Time calendared to implement the judgment is five months from the date of receipt of the order.
- (iv) With the above directions, OA is allowed, with no order as to costs.

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

Dated, the 15th day of November, 2019
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