

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

**Original Application No.20/305/2018**

**Date of Order: 27.08.2019**

Between:

K. Koteswara Rao  
S/o Late Sitaramaiah  
Aged about 80 years,  
Occ: Retired Research Officer, Gr.A  
Central Soil and Materials Research Station  
Near IIT Hostels, Hauz khas, New Delhi-16  
R/o H.No.4-35, Near Nanda Tree, Near New Lock  
Duggirala (PO), Guntur District – 522330. .... Applicant

AND

1. Union of India rep by its Secretary  
Ministry of Water Resources  
Shram Shakthi Bhawan, New Delhi.
2. The Director,  
Central Soil and Materials Research Station  
Near IIT Hostels, Hauz khas, New Delhi.
3. The Secretary,  
Ministry of Finance, Department of Expenditure  
North Block, New Delhi.
4. The Secretary  
Ministry of Personnel, Public Grievances and Pensions  
Department of Pensions and Pensioners Welfare  
Lock Nayak Bhavan,  
Khan Market, New Delhi – 110 003. ... Respondents

Counsel for the Applicant ... Mr. B. Pawan Kumar, rep. by Dr. A. Raghu Kumar  
Counsel for the Respondents ... Mrs. L. Pranathi Reddy, Addl. CGSC

**CORAM:**

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

**ORDER**

2. OA is filed challenging the rejection of the claim for proper fixation of the pension as per the recommendations of the 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup> Central Pay Commissions (in short, CPC).

3. Applicant joined the respondents organisation on 23.5.1959 as Graduate Junior Engineer. Thereafter, he rose in the career and retired, as Research Officer which is equivalent to Executive Engineer, on 30.6.1995 in the pay scale of Rs.3000-4500. Applicant states that he drew 15 increments in the grade of Executive Engineer, of which last two were stagnation increments at Rs.125/- each drawn on 1.1.1992 and 1.1.1994. The basic pension granted was Rs.2375/- per month based on the last 10 months average pay of Rs.4750/-. The 5<sup>th</sup> CPC recommended 100% neutralisation of inflation at all levels which was accepted by the Government. In view of this recommendation, applicant represented to the respondents to revise his Pension w.e.f 1.1.1996 by adopting the formula of 2.98 of original pension sanctioned, i.e., Rs.2375/- plus 50, as per 4<sup>th</sup> CPC. Respondents rejected the claim of the applicant vide impugned order dated 22.1.2018 by stating that Pension has been correctly fixed as per the 7<sup>th</sup> CPC fitment table. Hence, the OA.

4. The contentions of the applicant are that the Pension has not been fixed as per the recommendations of the Central Pay Commissions. Particularly, in the context of 100 % neutralisation of inflation as per the 5<sup>th</sup> pay recommendations, which were accepted by the Government. The action of the respondents is thus violative of the Articles 14,16 and 21 of the Constitution of India. Further, applicant has been put to a huge loss by sanctioning less pension.

5. Respondents opposed the contentions of applicant by stating that applicant has claimed revision of pension by making a hypothetical calculation on the basis of 100% compensation of DA/DR as on 1.1.1996. Prior to 1.1.1996, respondents claim that Dearness Allowance/Dearness Relief (DA/DR) were different for different category of employees. The pension of applicant was regulated from time to time, as per OMs dated 20.3.1996, 27.10.1997, 1.9.2008 and 6.7.2017 issued, consequent to the acceptance of the recommendations of the appropriate Central Pay Commission, by the Government. Therefore, pension fixed for the applicant was correct, is the contention of the respondents.

6. Heard both the counsel and perused the pleadings on record.

7. I) Learned counsel for the applicant draw the attention of the Tribunal to the recommendation of the 5<sup>th</sup> CPC under the head Compensation for Price rise which reads as under :

- i) The inflation neutralisation may be made uniform @ 100% at all levels. (Chapter 105 , para 105.9 ) --- Accepted.

Thereafter, to the 7<sup>th</sup> CPC resolution for pensioners and family pension at para 11 as under :

| Item No. | Recommendation  | Decision of Government   |
|----------|---|--|
| 11       | <p><b><u>Revision of Pension of pre 7<sup>th</sup> CPC retirees</u></b></p> <p>The Commission recommends the following pension formulation for civil employees including CAPF personnel who have retired before 01.01.2016</p> <p>(i) All the Civilian personnel including CAPF who retired prior to 01.01.2016 (expected date of implementation of the Seventh CPC recommendations ) shall first be fixed in the Pay Matrix being recommended by this Commission, on the basis of the Pay Band and Grade Pay at which they retired, at the minimum of the corresponding level in the matrix. This amount shall be raised, to arrive at the notional pay of the retiree, by adding the number of increments he / she had earned in that level while in service, at the rate of three percent. Fifty percent of the total amount so arrived at shall be the revised pension.</p> | <p>Both the options recommended by the 7<sup>th</sup> Central Pay Commission as regards pension revision be accepted subject to feasibility of the implementation. Revision of pension using the second option based on fitment factor of 2.57 be implemented immediately.</p> <p>The first option may be made applicable if its implementation is found feasible after examination by the Committee comprising Secretary (Pension) as Chairman and Member (Staff), Railway Board, Member (Staff), Department of Posts, Additional Secretary &amp; Financial Adviser, Ministry of Home Affairs and Controller General of Accounts as Members</p> |

As can be seen from the above, Government has accepted implementation of the second option based on the fitment factor of 2.57 immediately. The same has been adopted and pension fixed. In regard to the first option, Government was of the view that its feasibility may be examined by a Committee comprising of Chairman and Members stated therein. The claim of the learned counsel for applicant is that the revision of pension when done by applying the first option, applicant would stand to gain but not done by the respondents.

III) To resolve the dispute on hand, it would be apt to look into the fixation of pension of the applicant over the years. To begin with, upto 30.6.1995, when the applicant was in service, he was drawing Dearness Allowance as per the category of his pay. After 1.7.1995, under 4<sup>th</sup> CPC, applicant was disbursed Pension and Dearness Relief as per Dept. of Pension and Pensioners Welfare (DOP&PW) OM dated 20.3.1996 as under:

| Date from which payable | Pension/Family Pension per month                 | Rate of Dearness Relief per month                               |
|-------------------------|--|---|
| 1-1-1996                | Not exceeding Rs.1750/-                          | 148% of pension/family pension.                                 |
|                         | Exceeding Rs.1750/- but not exceeding Rs.3,000/- | 111% of pension/family pension subject to a minimum of Rs.2590. |
|                         | Exceeding Rs.3,000/-                             | 96% of Pension subject to a minimum of Rs.3330.                 |

On the advent of the 5<sup>th</sup> CPC, the pension of the applicant was fixed as per OM dated 20.3.1996 as presented here under:

|  |            |
|--|------------|
| “The pension of Shri Koteswara Rao as per 5 <sup>th</sup> CPC:-                    |            |
| A) Existing pension of Shri Koteswara Rao  | Rs.2375/-  |
| B) Dearness Relief 111% of basic pension   | Rs.2636.25 |
| <b>(O.M 42/8/96-P&amp;PW(G) dated 20<sup>th</sup> March, 1996, Annexure R-III)</b> |            |
| C) First Interim Relief 10% of Rs.2375   | Rs.238     |
| D) Second Interim Relief   | Rs.50      |
| E) 40% of Rs.2375  | Rs.950     |
| Consolidated Pension   | Rs.6250/-“ |

The above calculation makes it evident that the pension was revised by adding Dearness Relief upto 111% as per the category of pension he was granted. The 100 percent DA/DR neutralisation on account of inflation was effected w.e.f 1.1.1996 using the DA rates w.e.f 1.7.1996 (R-IV) .

IV) Coming to the 6<sup>th</sup> CPC, pension of the applicant was revised vide OM dated 1.9.2008 as under:

|                               |             |
|-------------------------------|-------------|
| “A) Existing Pension          | Rs.6250     |
| B) Dearness Pension           | Rs.3125     |
| C) Dearness relief upto AICPI | Rs.2250     |
| i.e. 24% of 6250+3125         |             |
| D) Fitment weightage 40% of   |             |
| Existing pension              | Rs.2500/-   |
| Consolidated pension          | Rs.14125/-” |

The pension further got revised with the implementation of the 7<sup>th</sup> CPC as given below, vide OM dated 6.7.2017, by referring to the relevant

concordance Table 36 released by the Government of India for revision of pension as under:

“Basic Pay as on 31.12.1995 Rs.4750  
(3000-100-3500-125-4500)

Basic Pay from 01.01.96 to 31.12.2005 Rs.12600  
(10000-325-15200)

Basic pay + SI Rs.4750

- a) Dearness allowance Rs.5273 (111% of Basic Pay)
- b) Interim Relief I Rs.475 (10% of Basic Pay)
- c) Interim Relief II Rs.100
- d) Rs.40% of Basic Pay Rs.1900

|                      |          |
|----------------------|----------|
| Total                | Rs.12498 |
| Pay in the new scale | Rs.12600 |

Basic Pay from 01.01.2006 to 31.12.2015 Rs.30040  
(15600-39100 GP 6600)

- a) Pre revised Rs.12600
- b) Pay in the Pay Band Rs.23440 (12600\*1.86)
- c) Grade Pay Rs.6600

|                      |          |
|----------------------|----------|
| Revised Basic pay    | Rs.30040 |
| (Rs.23440+6600)      |          |
| Pay in the New scale | Rs.30040 |

Notional Pay as on 01.01.2016 Rs.78500 (level-11-67700-208700)

(As per 7<sup>th</sup> CPC fitment table provided by the Department of Expenditure)

Pay fixed at Rs.78500/-

Revised Pension on 01.01.2016 Rs.39250/-”

Learned counsel for the respondents has submitted a note under the heading “Brief and Orders regarding Revision of Pre -2016 pensioners /family pensioners”. The details of the said note are as under:

“3. Further, the 7<sup>th</sup> CPC also recommended another formulation for revision of pension of past pensioners by notionally fixing the pay by giving the benefit of increments earned by the pensioners in the scale

from which he/she retired. The Cabinet decided that this option may be made applicable if its implementation is found feasible after examination by a Committee comprising Secretary (Pension) as Chairman and Members & Staff of Railway Board, Member (Staff), Department of Posts and AS & FA, Ministry of Home Affairs and CGA as Member.

4. The above Committee submitted its report on 14<sup>th</sup> December, 2016. The Committee recommended the following alternate method for revision of pension w.e.f. 1.1.2016:

“Notional pay of all civilian personnel, including CAPF, who retired prior to 1.1.2016 shall first be fixed in the pay matrix recommended by the Seventh CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired. This will be done by notional pay fixation under each intervening Pay Commission, based on the formula for revision of pay. Fifty percent of the notional pay as on 1.1.2016 so arrived at shall be the revised pension as per Formulation 1.

Pension has already been revised in terms of the Formulation 2 recommended by the Seventh CPC. Higher of the two formulations may be granted as the revised pension with effect from 1.1.2016.”

In the case of military pensioners, Military Service pay shall be added to the amount which is arrived at after notionally fitting them in the Seventh CPC matrix.

5. The above recommendation was approved by the Government and accordingly orders for revision of pension by notional fixation method have been issued vide Department of Pension & Pensioners' Welfare **O.M.No.38/37/2016-P&PW(A) dated 12.05.2017.**

6. In order to expedite pension revision cases of pre-2016 pensioners, concordance tables were drawn and circulated to all Ministries/Departments vide **O.M.No.38/37/2016-P&PW(A) dated 6.7.2017.**

IV) Based on the above elaborations, it is evident that the revision of pension of the applicant has been done based on the Dearness Relief to which the applicant is eligible under 4<sup>th</sup> CPC. The revision of pension has been done as per relevant OMs cited supra from



time to time, whenever Pay Commission recommendations were accepted by the Government. The claim of the applicant that the table No.36 of the concordance Table, related to 7<sup>th</sup> CPC, is incorrect since pension revision tables prepared by the Government for 5<sup>th</sup> CPC are wrong is not logical for reasons explained in arriving at the pension of the applicant in paras cited supra. Neutralisation is with reference to DA/DR in the context of inflation and not in regard to the pension perse.

(V) Further, applicant's claim that the Secretary's panel has altered the 7<sup>th</sup> CPC recommendations which were accepted by the Government, is incorrect, since the first option was not accepted by the Government of India and instead it was stated therein that a Committee, will go into the feasibility of the option. Accordingly, the Secretary's panel has gone into the issue and recommended the mode of implementation which was followed by the respondents as explained in paras above.

(VI) Applicant has also cited the Hon'ble Supreme Court judgment in **Union of India & Others v. Balbir Singh Turn & Anr** (Civil Appeal Diary No.3744 of 2016, decided on 08.12.2017) and that of the Judgement of the Principal Bench of this Tribunal, in OA 655/2010 (**Central Government SAG (S-29) Pensioners Association through its Secretary & Another v. Union of India & Others**, decided on 1.11.2011) wherein it was held that once the recommendations of the Pay Commission are accepted by the Government, they cannot be

changed by an executive order. In the present case, Tribunal does not find any such violation as expounded above. Other averments made by the applicant were also gone into and only those relevant have been touched upon.

VII) However, the impugned order dated 22.1.2018 is cryptic with the core aspect being stated but not attending to details. Hence, in the interest of justice it would be proper and necessary for the respondents to issue an elaborate reply covering each of the aspects raised by the applicant so that the grievance is fully resolved. Tribunal believes that such a comprehensive reply which is speaking and reasoned, will give a quietus to the issue on hand. The time allowed to issue the reply is 3 months from the date of receipt of this order.

With the above direction, the OA is disposed of with no order as to costs.

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

Dated, the 27th day of August, 2019

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