
(2018) 12 CAT CK 0159
In the Central Administrative Tribunal
Case No : Original Application No. 847 Of 2017

Balbir Singh

APPELLANT

Vs

Union Of India Through Secretary And Ors

RESPONDENT

Date of Decision : 28-12-2018

Acts Referred:

Central Civil Services Pension Rules, 1972 — Rule 49

Citation : (2018) 12 CAT CK 0159

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Tanvir Ahmed Ansari, Manish Kumar

Final Decision : Allowed

Judgement

1. Through the medium of this O.A., the applicant has sought the following reliefs:-

"(a) Quash and set aside the order dated 22.09.2016 issued by the Respondent No.1.

(b) Direct the Respondents to grant the applicant grade Pay of Rs. 4600/- w.e.f. 01.01.2006.

(c) Direct the Respondents to fix the Basic pension of the applicant at Rs. 9515 w.e.f. 01.01.2006 and pay arrears to the applicant with interest @ 15% per annum."

2. The facts of the case are that the applicant was appointed as Data Processing Assistant in the year 1984. The 5th Central Pay Commission (CPC) placed all the Data Processing Assistants of the Department in the pay scale of Rs. 5500-9000/-. After completion of 12 years, the applicant was granted 1st ACP in the pay scale of Rs. 6500-10500/- w.e.f. 09.08.1999. The applicant retired on superannuation from the post of Data Processing Assistant, Grade-III on 30.11.2005. The applicant was granted pro rata pension at Rs. 4115/- vide order

dated 02.11.2005 as per table below:-

Last 10 months pay with DP : 12630

Last 10 months average pay : 12630

Pension:50% of 12630 : 6315

Basic Pension with pro rata : 4115

(6315x21.5/33)

The 6th CPC recommended that the posts of Scientific Staff in the pay scale of Rs.6500-10500/- carrying minimum qualification of engineering degree or a post graduate degree should also be upgraded and placed in the pay scale of Rs.7450-11500/-corresponding to the revised pay band of Rs. 9300-34800/- along with grade pay of Rs. 4600/-.

3. The applicant avers that the respondents granted the grade pay of Rs.4600/- to his juniors w.e.f. 01.01.2006 but have denied the same to him. The anomaly is regarding revised fixation of Grade Pay of Rs.4200/- instead of Rs.4600/- as fixed for all Data Processing Assistants. The said disparity is clarified in the table below:-

Name

Designation

Basic pay (without D.P.)

Pay Scale (before 6th CPC)

Revised Pay

Revised Grade Pay

A.K. Gupta

DPA III

8500

6500- 10500

9300- 34800

4600

Balbir Singh

DPA III

8500

6500- 10500

9300- 34800

4200

The applicant submits that he was holding the same designation in the same pay scale, in the same department, with the requisite qualification of a Post Graduation degree (in Arts). Despite this, a discriminatory treatment has been meted to him.

4. Respondent No.3 issued an O.M. dated 01.09.2008 regarding revision of pension of pre-2006 pensioners for implementation of Government decision on the recommendations of the 6th CPC. Thereafter, respondent No.3 issued another O.M. dated 28.10.2013 stating therein at para 5 of the O.M. that the pension so arrived at will be reduced pro rata, where the applicant has less than the maximum required service for full pension as per Rule 49 of the CCS (Pension) Rules, 1972 as applicable before 01.01.2006 and in no case it will be less than Rs. 3500/- p.m. After implementing the O.Ms dated 01.09.2008 and 28.01.2013, respondent No.2 fixed the pension of the applicant at Rs. 6201/- w.e.f. 01.01.2006.

5. The applicant avers that the O.M. dated 28.01.2013 was challenged by Sh. M.O. Inasu, a pre-2006 pensioner before the CAT, Ernakulam Bench by filing OA-712/20012, which was allowed vide order dated 16.08.2013 directing that the revised pension w.e.f. 01.01.2006 under para 4.2 of the O.M. 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 were passed by this Bench in OA-1165/2011 dated 21.04.2015 and OA-715/2012 dated 16.08.2013.

5.1 In compliance of the order dated 16.08.2013 in OA-715/2012, respondent No.3 issued O.M. dated 06.04.2016 and fixed the revised basic pension of the applicant (wrongly) at Rs. 8145/- w.e.f. 01.01.2006 instead of Rs. 9515/-. Respondent No.2 rejected the case of the applicant vide impugned order 15.02.2016 by giving the reasoning that the pension will not get any financial benefits due to revision of pension as per DoP&PW Order No. 38/37/08-P&PW(A) dated 30.07.2015. The applicant submits that O.M. dated 30.07.2015 does not say that the pensioner will not get any financial benefits due to revision of pension.

5.2 Therefore, the applicant represented against this order⁵ on 19.07.2016. Thereupon, the Director NSSO forwarded the case of the applicant for fixation of basic pension at Rs. 9515/- w.e.f. 01.01.2006 in the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4600 to respondent No.2, on 29.07.2016. However, respondent No.2 rejected the applicant's case vide order dated 22.09.2016 stating that the pension of the applicant has been revised as per O.M. dated

06.04.2016.

6. In the counter affidavit, the facts of the case are not disputed by the respondents. They submit that the applicant was a Data Processing Assistant, Grade-III. 5th CPC placed Data Processing Assistant, Grade-III in the pay scale of Rs.5500-9000. After completion of 12 years service in the pay scale of Rs. 6500-10500/-, the applicant was granted 1st ACP. The applicant retired on superannuation from the post of Data Processing Assistant Grade-III on 30.11.2005 in the pay scale of Rs. 6500-10500/-. The applicant was granted pro rata pension of Rs.4115/- vide order dated 02.11.2005. The 6th CPC recommended that the posts of scientific staff in the pay scale of Rs. 6500-10500/- carrying minimum qualification of engineering degree or a post graduate degree should also be upgraded and placed in the pay scale of Rs.7450-11500/-corresponding to the revised pay band of Rs.9300-34800/- along with the Grade Pay of Rs.4600/-. Vide letter dated 15.09.2008, MoS&PI granted the grade pay of Rs. 4600/- to juniors of the applicants w.e.f. 01.01.2006 but did not grant the same to the applicant since he had already retired.

6.1 It is further submitted that the Ministry of Personnel, PG and Pension vide O.M. dated 01.09.2008 revised the pension of pre-2006 pensioners for implementing the recommendations of the 6th CPC. On 28.01.2013, Ministry of Personnel, PG and Pension issued another O.M. stating that the pension arrived at in accordance with para 2 and indicated in column 9 of annexure will be reduced pro rata, where the applicant had less than maximum required service for full pension as per Rule 49 of CCS (Pension) Rules, 1972 as applicable before 01.01.2006 which in no case should be less than Rs.3500/- p.m.

6.2 On implementation of the recommendations of 6th CPC, the pension of the applicant was revised to Rs. 6201/- as per O.M. dated 01.09.2008 and 28.01.2013. His pension has been revised to Rs. 8145/-w.e.f. 01.01.2006 after giving him benefit of 50% of the minimum of the pay in the pay band and the grade pay corresponding to the pre-revised pay scale as per fitment table without pro rata reduction of pension as per O.M. dated 06.04.2016.

6.3 It is further contended that the respondents have rightly rejected the case of the applicant for fixing the basic pension at Rs.9515/- as pensioner will not get any financial benefit due to revision of pension cases as per DoP&PW Order No. 38/37/08-P&PW(A) dated 30.07.2015. Hence, the applicant has no case and the current O.A. deserves to be dismissed.

7. I have gone through the facts of the case carefully and considered the rival submissions of both sides. The arguments put forth by learned counsel for the respondents, Sh. Manish Kumar, for denying upgradation in the pension of the applicant are not convincing. It is not in dispute that the 6th CPC specifically recommended the post of Data Processing Assistant in the pay scale of Rs.6500-10500 along with Grade Pay of Rs.4600/-. This recommendation was

duly accepted by the Government of India vide Gazette Notification dated 29.08.2008. (Annexure R-16).

7.1 The contention of the respondents that the Grade Pay of Rs. 4600/- was not granted to the applicant since he had already retired is not at all tenable. This issue has already been dealt with by the Hon'ble High Court of Delhi in WP(C)-3035/2016(Ram Phal Vs. UOI & Ors.) on 03.08.2016 wherein the O.M. dated 11.02.2009 has been quashed to the extent it states that the benefit of upgradation of post subsequent to the retirement would not be admissible to pre-2006 pensioners (Annexure R-17). While going through the facts of the case, their Lordships in para-24 to 27 have observed as under:-

"24. It apparent that the respondents have not applied their mind while fixing the pension of the petitioner at Rs. 8701/- per month and it seems that the respondents have placed reliance upon the Office Memorandum dated February 11, 2009 and have placed the petitioner in the pay band S-12 but has not taken into consideration the subsequent upgradation of the post of Subedar Major which would place the petitioner in pay band S-14, and needless to state the pension would also have to be revised accordingly.

25. We would also note that reliance placed on the Office Memorandum dated February 11, 2009 itself is misguided for the reason that Central Government SAG case was an appeal against the order of Central Administrative Tribunal dated November 01, 2011 wherein the Tribunal had set aside the Memorandum dated February 11, 2009. The decision rendered by the Division Bench of this court was also challenged before the Supreme Court but the same attained finality and quietus when the curative petition was dismissed on April 30, 2014. Needless to state the order dated February 10, 2016 having been passed subsequently, the respondents were duty bound to consider the case of the petitioner de hors the Memorandum dated February 11, 2009 and had the same been done, undoubtedly the petitioner would stand entitled to pension in sum of Rs. 9375/- per month as has been claimed by him.

26. We would also note that the present petition would also need to be allowed in the teeth of the recent Office Memorandum dated April 06, 2016 wherein it has been unambiguously stated that 'It has now- been decided that 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.? On the same reasoning, the petitioner cannot be denied the benefit of revised pension when the respondents themselves have adopted the aforementioned position.

27. Resultantly, the present petition is allowed. The order dated February 10, 2016 is quashed and OM dated February 11, 2009 to the extent it states that the benefit of upgradation of post subsequent to the retirement would not be

admissible to the pre-2006 pensioners is quashed and a mandamus is issued to the respondents directing them to fix the pension of the petitioner in sum of Rs. 9375/- per month as given in the fitment table appended to the Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Pensioners Welfare Office Memorandum F.No. 38/40/12-P&PW (A) dated 28.01.2013 with effect from January 01, 2006. The petitioner would also be entitled to arrears of the pension as would be refixed by the respondents. The needful be done within a period of two months, failing which the petitioner would also be entitled to simple interest @ 9% per annum. There shall, however, be no order as to cost. "

Thus, clearly, as per the aforementioned judgment, the applicant cannot be denied upgradation on the ground that he had retired on 30.11.2005 i.e. prior to recommendation and implementation of 6th CPC.

8. Similar benefit has been granted by the respondents in the case of another Data Processing Assistant Sh. A.K. Gupta, who was holding the same designation along with same pay scale with the respondent department. It is also a fact that the applicant was a Post Graduate in Arts and fulfills the necessary eligibility criteria.

8.1 While recommending the case of the applicant for correction in the pension fixed vide earlier PPO No.328000500600, Director NSSO, on the same premise, recommended his case stating that:-

"3. In the case of Sh. B.S. Sharma, the calculation of pension would need to be revised as under:

(i) Last pay drawn in the scale (Rs. 6500-200-10500):-BPRs. 8500/- - DPRs. 4250/-.

(ii) Average pay drawn during 10 months before retirement:-BP+DP=Rs. 12630/-.

(iii) Original Pension+Rs. 12630X50%=6315

(iv) As per fitment table of 6th CPC, Original Pension=Rs. 9515 as on 1.1.2006.

Original Pension=Rs. 9515 as on 1.1.2006.

4. Since Rs. 9515 is greater than 50% of the minimum of pay scale i.e. Rs. (9300+Rs.4600)=Rs.7045/-. It is requested that pension of Sh. B.S. Sharma should be fixed Rs. 9515/- w.e.f. 1.1.2006."

9. In view of the aforesaid facts and discussions, I hold that the applicant is eligible for upgradation of pay scale of Rs. 7450-11500 with Grade Pay of Rs. 4600/- w.e.f. 01.01.2006. I set aside the impugned order dated 15.02.2016 and allow the O.A. The respondents are directed to grant the applicant Grade Pay of Rs. 4600/- w.e.f. 01.01.2006 and fix the basic pension of the applicant at Rs. 9515/- w.e.f. 01.01.2006. This shall be done within a period of three months from the date of receipt of a certified copy of this order. However, I am not

inclined to grant any interest on the arrears so accrued. No costs.