(2023) 03 CAT CK 0020

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00927 Of 2019

P.C. Mathaikutty APPELLANT

Vs

Pay & Accounts Officer/Pension Intelligence Bureau, Ministry of Home Affairs AGCR Building, New Delhi-110002 & Ors RESPONDENT

Date of Decision : 08-03-2023

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 37A, 70

Citation : (2023) 03 CAT CK 0020

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : C.S. Gopalakrishnan Nair, Rashmi K.R, O.M. Shalina

Final Decision : Dismissed

Judgement

K. Haripal, Member J

1. The official career of the applicant had commenced on 18.07.1966 in the Railways; he left that service on 06.06.1969 and joined Intelligence Bureau, IB for short, as Assistant on 07.06.1969; he continued there till 28.07.1983 and left that service on 28.07.1983 for taking up employment as Assistant Regional Director/Manager Grade-I in the Employees State Insurance Corporation, ESIC, through the UPSC. According to the applicant, while issuing Annexure-A1 relieving order, it was noted that his lien would be retained as per Rules. He was deemed to have been absorbed in the ESIC on 27.07.1988 (sic.), after a period of two years of relief from the IB. Pursuant to the erstwhile Rule 37A of the CCS(Pension) Rules, 1972, the Rules for short, he was allowed 100% commutation of pension for the period of service in the IB. Although his service in the Railways was treated as continuation for all purposes as stated in Annexure-A3, that period was not counted. Pursuant to the orders of the 4th respondent on the basis of the judgment of the Hon'ble Supreme Court in K.Ganesan v. Registrar CAT, Madras Bench and others in WP(C) No.22207/2002, full pension was restored to the applicant on the basis of Annexure-A5 office

memorandum dated 23.06.2017. But the applicant was not granted the rightful pension by not taking into account his correct pay while serving under the 3rd respondent. As shown in Annexure-A6, his last pay was Rs.680/- in the pay scale of Rs.425-800. During the 4th CPC this was revised to Rs.1640-2900 and Rs.5500-9000 in the 5th CPC. In the 6th CPC this scale was revised to PB-2 with grade pay of Rs.4,200/-. At the same time, the scale of Assistant was upgraded to PB-2 with grade pay of Rs.4,600/- with effect from 01.01.2006. On revision, as per the 6th CPC, pension of the applicant was revised to Rs.2,126/- with effect from 16.03.2007, which is evident from Annexure-A7. But this was not the full pension but only 1/3 which is evident from Annexure-A8. By Annexure-A9 office memorandum dated 06.04.2016 the Government took away the condition that there must be qualifying service of 33 years for granting full pension. Accordingly, the applicant requested for granting him full pension. Then the 1st respondent asked for certain clarifications from the 3rd respondent. The applicant sent a representation, Annexure-A12 to the 3rd respondent for revising his pension from 16.03.2007 onwards. Even though Annexure-A13 clarification was issued, he has been granted full pension only at the rate of Rs.6,750/- from 16.03.2007 instead of Rs.7,215/-, which is illegal and arbitrary. Rule 70 of the Rules prohibits such a reduction. Secondly, when his pension was revised during the 7th CPC, he has been granted pension only at the rate of Rs.20,550/- instead of Rs.23,800/-, which is 50% of notional pay of Rs.47,600/- as per Annexure-A16 concordance table. He had drawn 14 increments and as such his notional pay should be arrived at Level 6 Index 14. Therefore, he seeks a declaration that he is entitled for pension at the rate of Rs.7,215/- with effect from 16.03.2007 and at the rate of Rs.23,800/- with effect from 01.01.2016 and a direction to the respondents to grant him pension at that rates with arrears and interest.

2. The respondents filed a reply denying the contentions in the O.A. According to them, the applicant had been in IB from 07.06.1969 to 27.07.1983. Consequent upon his termination of lien in IB from 27.07.1985 he was absorbed in the ESIC. He opted for 100% of lumpsum amount in lieu of pension on absorption. After medical examination on 17.03.1992 his 1/3 pension was restored with effect from 16.03.2007, after fifteen years, as per the instruction of the Do P&PW. After recommendations of the 7th CPC, his pension has been revised to Rs.20,550/- with effect from 01.01.2016. The claim that he is entitled to get pension at Rs.23,800/- by fixing notional pay after granting 14 increments which he had drawn in the rank of Assistant in the IB has no basis. At the time of his relieving from the IB his last pay was Rs.680/-, which was notionally fixed at Rs.2,000/- with effect from 01.01.1986 as shown in Annexure-R1 Model Ready Reckoner. In Annexure-A9 it has been specified that 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 corresponding to the pre-revised pay scale as per the fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Referring to Annexure-R2 they said that he is entitled to get pension of Rs.7,215/- with effect from

17.03.2007 and Rs.20,550/- with effect from 01.01.2016. When the pension was wrongly fixed at Rs.6,750/- a corrigendum was issued. Referring to Annexure-A15 they said that the pension of pre-2016 pensioners is to be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. Pension of the applicant was fixed taking into account his last pay in the IB, which was notionally fixed at Rs.2,000/- with effect from 01.01.1986. According to the respondents, revision of pension of the applicant was done correctly, following the extant OMs.

3. In the rejoinder it is submitted by the applicant that his revised pension should have been as shown in Annexure-A21 table No.25(revised). He has also referred to the decision of the Supreme Court in All Manipur Pensioners Association v. The State of Manipur and others [(2020) 14 SCC 625] and D.S. Nakara & others vs Union of India [(1983)1 SCC 305] and a decision of the Delhi High Court in Ram Phal v. Union of India and others in WP(C) No.3035/2016. Therefore, according to him, he is entitled to get revised pension of Rs.22,450/- from 01.01.2016.

4. In the additional reply the respondents have pointed out that the fact that the post of Assistant is placed in PB-2 with grade pay of Rs.4,600/- with effect from 01.01.2006 cannot be taken for fixing the pension of the applicant on a higher rate in the light of the decision in K.S.Krishnaswamy and others v. Union of India and another [(2007) 2 SCC (L&S) 491]. According to them, corresponding scale of Rs.425-800 during the 3rd CPC is Rs.1640-2900 in the 4th CPC, Rs.5500-9000 during the 5th CPC, Rs.9300-34800 with grade pay of Rs.4,200/- in the 6th CPC and Rs.35400-112400 in the 7th CPC. Notional pay of the applicant based on the last drawn pay is Rs.2,000/- as on 01.01.1986. Pension of the pre-1986 retirees had to be fixed on the basis of the notional pay as on 01.01.1986 and not on the basis of the calculation suggested by the applicant. As per Annexures-A13, A17, A18 and A19 the pension of the applicant has been fixed at Rs.20,550/-. After claiming pension of Rs.23,800/- in the O.A., in the rejoinder he has claimed only Rs.22,450/-, which shows inconsistency. Pension of the applicant was fixed strictly in accordance with the Rules.

5. I heard Sri. C.S.Gopalakrishnan Nair, the learned counsel for the applicant and Smt. O.M. Shalina, the learned Senior Central Government Standing Counsel for the respondents, in great detail. The applicant is aggrieved by non-fixation of his pension at the rate of Rs.7,215/- with effect from 16.03.2007 and at the rate of Rs.23,800/- with effect from 01.01.2016. Admittedly, earlier he was granted pension at the rate of Rs.6,750/- from 17.03.2007. After filing the Original Application that mistake was rectified and a corregendum has been issued and now by Annexure-R2 100% restorable pension from 17.03.2017 has been fixed at Rs.7,215/- as claimed by the applicant. Therefore, that part of the grievance has since been redressed.

6. Now the remaining question is whether the applicant is justified in claiming

pension at the rate of Rs.23,800/- from 01.01.2016.

7. In the nature of the contentions raised, it is not necessary to go into the service history of the applicant. Suffice it to say that the disputed contentions relate to the pension fixed for the period of service in IB from 07.06.1969 to 28.07.1983 and the lien period of two years upto 28.07.1985. He was relieved from the IB service for joining his assignment in the ESIC. At that time Rule 37A of the then Rules enabled a person who obtained absorption in a public sector undertaking or autonomous body after quitting Government servant to opt for pro-rata gratuity and lumpsum amount in lieu of pension. When the applicant was permanently absorbed in the ESIC he opted for 100% lumpsum amount in lieu of pension. Following Annexure-A5 office memorandum dated 23.06.2017, he was sanctioned full pension at first at the rate of Rs.6,750/- which has since been revised to Rs.7,215/- per mensem as claimed by him.

8. Now coming to the disputed question, the learned counsel for the applicant submitted at first that what is applicable is Table 22, appended to Annexure-A16. According to the learned counsel, the pension fixed at Rs.20,550/- is incorrect and illegal; on notionally fixing, he should have been taken to have drawn 14 increments and as such his notional pay has to be fixed at Level 6, which comes to Rs.47,600/- and therefore, he is justifiably entitled to claim 50% of the same as pension which is Rs.23,800/- from 01.01.2016. The learned counsel also relied on the decisions reported in All Manipur Pensioners case, quoted supra, Union of India and another v. SPS Vains (Retd.) and others [(2008) 9 SCC 125] and State of Rajasthan and others v. O.P.Gupta [(2022) Supreme (SC) 937]. Later, the learned counsel, relying on Annexure-A21 produced along with the rejoinder, submitted that the pension is entitled to be revised under Table 25 (revised) and thus the notional pay as on 01.01.2016 should be taken as Rs.44,900/- and half of the same, that is Rs.22,450/-, is to be granted as pension.

9. On the other hand, the learned Senior Central Government Standing Counsel pointed out that, having found that the applicant had retired from IB service during 1983-1985 at the scale of pay of Rs.425-800, he cannot be heard to say that Table 25 (revised) is applicable. According to the learned Standing Counsel, Table 22 is relevant. The basic pay of the applicant as per the Model Ready Reckoner is Rs.2000/-, from 01.01.1986 to 31.12.1995, and corresponding notional pay as on 01.01.2016 is Rs.41,100/- and 50% of the same has been granted to him as pension. The applicant had never been in the scale of pay of Rs.2000-3500 prior to 01.01.1986, so that Table 22 alone is applicable, when the discrepancy in the grant of pension as on 17.03.2007 was noticed, a corrigendum was issued by revising pension from Rs.6,750/- to Rs.7,215/-.

10. Annexure-A6 indicates that at the time of relief from IB he was drawing at the scale of Rs-425-800. In the subsequent revision of pay that scale was revised to Rs.1640-2900 by upgrading the post of Assistant in IB. It is noticeable that in terms of DoP & PW order dated 10.02.1998 the pay of all Government servants

who retired prior to 01.01.1986 and were in receipt of pension as on 01.01.1986 will be fixed on notional basis in the revised scale of pay for the post held by the pensioners at the time of retirement or on the date of death introduced subsequent to the retirement/death of the Government employee. Here, what is important is that the scale of pay of the post was revised by way of an order dated 10.02.1998 so that the respondents admit that the dictum of Krishnaswamy, quoted supra, rendered on 23.11.2006 is not applicable. In other words, there the post, in contrast to the scale, was important and that was how the applicant was entitled to get the benefit of revised scale of Rs.1640-2900 whereas the corresponding scale in the 4th CPC was only Rs.1400-2600. Whatever it may be, from Annexures-A4, A7, A8 and A10 it is clear that the corresponding scales of Rs.425-800 of Assistant in the IB is Rs.1640-2900 during 4th CPC, Rs.5500-9000 during 5th CPC, Rs.9300-34800 with grade pay of Rs.4,200/- in 6th CPC and Rs.35400-112400 in the 7th CPC. This is not disputed by the learned counsel for the applicant.

11. This being the position, it is not known as to how the applicant could say that he was entitled to fix his notional pay at the rate of Rs.47,600/- on 01.01.2016 as though he was entitled to get 14 increments. The learned counsel could not apprise me the statutory provisions or any standing instruction, which enabled him to fix the notional pay with 14 increments. From Annexure-A15 also it is clear that what is important is the pay in the pay scale/pay band and grade pay at which the applicant had retired. Therefore, such a contention is fallacious.

12. The prevaricative stand of the applicant is clear like day light. At first he has submitted that his pension has to be fixed based on Annexure A16 and Table 22 annexed thereto. On that basis, he said that he is entitled to get pension fixed at Rs.23,800/-, which is 50% of Rs.47,600/-. I have already pointed out that the theory of claiming pension notionally, as though he was granted 14 increments, has no basis. Moreover, that argument would hold good only if his basic pay was Rs.2,480/- when he demitted the office in IB on 28.07.1983. Later, along with the rejoinder he produced Annexure-A21 Table 25 (revised) and sought that he is entitled to get half of Rs.44,900/- that is Rs.22,450/- as pension from 01.01.2016. This also is not convincing. Table 25 (revised) deals with scale of pay of Rs.2000-3500 from 01.01.1986 and corresponding scale from 01.01.2016 is Level 7 at the scale of Rs.44900-142400. As stated earlier, the applicant has never worked in a post carrying scale of pay Rs.2000-3500. On the other hand, it is the common case that he had been in the scale of Rs.425-800 at the time of relief from the IB which has since been revised to Rs.1640-2900. Table 22 in Annexure-A16 deals with such a scale. It indicates that the revised scale of pay was Rs.1640-2900 during the 4th CPC, Rs.5500-9000 during the 5th CPC, Rs.9300-34800 with grade pay of Rs.4200 during the 6th CPC and Rs.35400-112400 at Level 6 during the 7th CPC, with effect from 01.01.2016. Therefore, it is very clear that as initially stated by the applicant, Table 22 is applicable. From Table 22 it is clear that, for those who drew pre-basic pay of Rs.2,000/- during the 4th CPC, notional pay can be fixed at Rs.41,100/-. The

applicant is entitled to get 50% of the same, which has been fixed in Annexure-R2. In my judgment, that has been done correctly which does not call for interference.

13. The applicant cannot claim the benefit of subsequent enhancement of the scale of Assistant in IB during the 5th and 6th CPC periods. There the dictum in Krishnaswamy would come into play. The decisions in All Manipur Pensioners Association or SPS Vain, quoted supra, were rendered basing on D.S.Nakara, quoted supra. It is important to state that in K/rishnaswamy, D.S.Nakara has been clearly distinguished.

14. To sum up, the applicant is not entitled to get his pension revised to Rs.23,800/- from 01.01.2016 as claimed by him.

The Original Application lacks merits and is dismissed. No costs.

(Dated, this the 8th March, 2023)

