

(2018) 12 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 060, 000241, 00242 Of 2018

Subhash Chander

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 05-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0028

Hon'ble Judges : P. Gopinath, J

Bench : Single Bench

Advocate : B.S. Aggarwal, Rakesh Verma

Final Decision : Dismissed

Judgement

1. Applicants in this case are pre-2006 retirees, who have challenged the speaking order dated 24.01.2014 (Annexure A-1) passed by the respondents whereby they have been granted lesser pension @ 50% of sum of minimum of pay band + grade pay, as against 50% of minimum of pay in the band + grade pay. They have also challenged the O.M. dated 17.08.2009 (Annexure A-4), OM dated 22.2.2010 (Annexure A-5) and O.M. dated 30.12.2010 (Annexure A-8) which make the basis for the impugned speaking order (Annexure A-1).

2. Applicants' counsel argues that Rule 4.2 of the Revised Pension Rules has been misinterpreted by the respondents. By elaborate examples, applicants have tried to show that the minimum of pay in the pay band is different from the minimum of pay band. In the present case, according to the applicants, the pension calculated on the basis of 50% of minimum of pay in the band and grade pay (Rs.37400-67000 + G.P. Rs.9000) comes to Rs. 24295/- whereas if calculated on the basis of 50% of minimum of pay band + grade pay, as done by the respondents, comes to Rs.23200.

3. The respondents in their written statement submitted that after implementation of 5th Punjab Pay Scale, the Govt. of Punjab, Department of Finance vide notification dated 17.08.2009 revised the pension of pre 01.01.2006

pensioners, family pensioners and it was to be fixed under Rule 4.1 and 4.2 of the above notification (Annexure R-3). As per Rule 4.2 the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This will be reduced pro-rata if qualifying service of the person falls short of 33 years (later on vide letter dated 15.12.2011 Punjab Govt. reduced the qualifying service to 25 years for full pension w.e.f. 01.12.2011). However, vide decision dated 14.02.2013 in O.A. NO. 391/CH/2012 titled Rajwant Kaur Sidhu Vs. Union of India & Others, the cut-off date of 01.02.2011 for linkage of full pension with qualifying service of 25 years was quashed and it was ordered that the pensioners are entitled to the fixation of pension in terms of provision of Rule 4.2 quoted in communication dated 17.08.2009. It is submitted that according to the said notification pension of the Lecturer (Selection Grade with 3 or more years of service) working in pre-revised pay scale of Rs.12000-18300, has been revised as Rs.23200 which is minimum 50% of the pay in the pay band plus grade pay of the pay band of Rs.37400-67000 + Grade Pay Rs.9000, and the pension of the applicants has been accordingly fixed @ Rs.23200/-. Therefore, the claim of the applicants deserves to be dismissed.

4. Learned counsel for the respondents relied upon two judgments of this Bench, in O.A. No. 770/HR/2013 titled Smt. Usha Khetrapal Vs. Union of India & Others, decided on 3. 02.2015, and second in O.A. NO. 060/00526/2016 titled Smt. Shashi Kanta & Others Vs. U.O.I. & Another decided on 11. 11.2016, and also a judgment of the Jurisdictional High Court in the case of R.K. Aggarwal and Others Vs. State of Haryana and Others decided on 21.12.2012, to buttress his submission that the pension is to be fixed not lower than 50% of the minimum of the pay in the band and the grade pay thereon, as has rightly been done in the case of the applicants.

5. We have carefully considered the matter and perused the pleadings on record and the case-law cited in support thereof by both applicants and respondents. The issue is no longer res integra. The identical matters have already been considered and decided by this Court. In identical matter of Smt Usha Khetarpal (supra), this Court dismissed the similar claim of the applicants and held as under:-

"I have carefully considered the submissions made by the learned counsel for the parties. The basic premise in the applicant's claim appears to be that before fixation of the pension, the applicant's pay that has to be taken as the base for fixation of pension has to be fitted within pay scales applicable to college teachers after 01.01.2006. This should come to Rs.49890 in the case of the applicant and hence her pension should be re-fixed at Rs.24945. There is no order/notification/policy formulation regarding this premise of the applicant and her pension had been fixed in accordance with para 4.2 taking her pay at the minimum of the Pay Band of Rs.37400-67000 as per order dated 30.12.2010 and

hence, 50% of the minimum of Pay Band + Grade Pay in her case comes to Rs.23200 which the applicant has been allowed as her pension. The applicant has also not impugned the orders dated 02.09.2009/30.12.2010 through this O.A. Hence, it is concluded that there is no merit in the claim of the applicant. Moreover, a similar claim has already been disallowed vide order dated 19.01.2015 in O.As No. 771/HR/2013 & 804/CH/2013 titled Suksham Aggarwal & Dr. O.P. Sood respectively and accordingly, this O.A. is also disposed of accordingly."

Thus, the distinction sought to be made by the applicants has been adjudicated and the applicants' contention of pension @ Rs.24945/- has been rejected in above O.A. The above judgment fixed the pension of persons similarly placed as the applicants in this O.A., at Rs.23,200/-.

6. Similarly, in the case of Shashi Kanta (supra), this Court observed as follows:-

"I have carefully considered the pleadings of the parties, material on record and arguments put forth by learned counsel. It is self-evident that employees of the Chandigarh Administration including the college teachers/Principals are paid as per their counterparts in the Punjab Government. UGC scales are indeed applicable to the college teachers of the Chandigarh Administration as these have been adopted by the Punjab Government. However, so far as pensioners of the Punjab Government and Chandigarh Administration are concerned, they are covered by a single circular dated 22.02.2010 (Annexure R-6) and there are no separate instructions for determining the pension of the college lecturers. The letter dated 13.05.2015 (Annexure A-11) categorically applies to the faculty and other staff in Central Universities and colleges there under and Deemed Universities whose maintenance expenses are met by the UGC. The college of the Chandigarh Administration do not fall within this definition and hence letter dated 13.05.2015 cannot be pressed as being applicable to the college teachers. The claim of the learned counsel for the applicants that since letter No. 1-32/2006-U/II/U.I(i) dated 31.12.2008 relating to the revision of the pay of the teachers in Universities and colleges has been adopted by the Punjab Government/Chandigarh Administration and consequently the provisions regarding para 8(g)(i) should also be applicable, is misconceived as the pensions are to be determined by the employer and not by the UGC which is not releasing any grant for this purpose to the Chandigarh Administration. The maintenance expenditure including for salaries and pensions of the colleges under the Chandigarh Administration is met by the Chandigarh Administration itself and not by the UGC. Hence, neither para 8(g)(i) of letter dated 31.12.2008 or letter dated 13.05.2015 (Annexure A-11) can be pressed to further the cause of the applicants.

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Hence, in view of the discussion above, it is concluded that there is no merit in

this O.A. and the same is rejected."

7. Even the Jurisdictional High Court in the case of R.K. Aggarwal and Others Vs. State of Haryana and Others decided on 21.12.2012, while entirely agreeing with the view taken by the Full Bench of the Principal Bench of the Tribunal in the case of Central Government SAG (S-29) Pensioners' Association and another Vs. Union of India and another (O.A. NO. 655 of 2010), considered the matter in detail and settled the issue of grant of pension to pre-01.01.2006 in a very clear and unambiguous order. The operative part of the judgment is extracted hereunder:-

"26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent OMs dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures that "the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% 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 would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to refix the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months. In case, the arrears are not paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to cost."

The Court has clearly laid down in above judgments that pension is to be fixed as 50% of the sum of the minimum of pay in the pay band + G.P. corresponding to the pre-revised pay scale from which the pensioner had retired. The crucial phrases to be noted are 50% of sum of "minimum of pay in the pay band and grade pay" i.e. 50% of (Rs.37,400+Rs.9000) and corresponding to the pre-revised pay scale i.e. Rs.12000 - Rs.18300 being the pay scale from which the applicants had retired, and not the pre-revised pay, as is being argued by the applicants. The ratio of law laid down in the indicated judgments is mutatis mutandis applicable to the present controversy, and is the complete answer to the problem in hand.

8. In view of the above orders of the Tribunal and the Jurisdictional High Court, the O.A. is devoid of merit, and is dismissed.