

(2013) 04 DEL CK 0401
In the Delhi High Court
Case No : Writ Petition (C) 1535 of 2012

Union of India and Another	Vs	APPELLANT
Central Govt. Sag and Others		RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 200 DLT 165 : (2013) 4 SCT 58

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rajeeve Mehra, ASG with Mr. Ruchir Mishra and Mr. Ashish Virmani, for the Appellant; Nidhesh Gupta with Mr. M.K. Ghosh and Mr. Tarun Gupta, Advocates in W.P.(C) 1535/2012 and Mr. Sushil Kumar Malik, Advocate in W.P.(C) 2348/2012, 2349/2012 and 2350/2012, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—We note that on January 28, 2013 the petitioners have issued an office order dated January 28, 2013 which reads as under:-

OFFICE MEMORANDUM

Sub: Revision of pension of pre-2006 pensioners -reg.

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, orders were issued for revision of pension/family pensioners vide this Department's O.M. No. 38/37/08 P&PW(A) dated 1.9.2008, as amended from time to time.

2. It has been decided that the pension of pre 2006 pensioners are revised w.e.f. 1.1.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 1.9.2008, as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay correspondent to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of

Expenditure OM No. 1/1/2008-IC dated 30th August, 2008. In the case of HAG and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above-referred OM dated 30.8.2008 of Ministry of Finance, Department of Expenditure.

3. The normal family pension in respect of pre-2006 pensioners/family pensioners as revised w.e.f. 01-01-2006 in terms of para 4.1 or para 4.2 of the OM dated 01-09-2008 would also be further stepped up to 30% of the sum of minimum of pay in pay band and the grade pay corresponding to the pre-revised pay scale from which the Government servant had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No. 1/1/2008 - IC dated 30-08-2008. In case of HAG and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above referred OM dated 30-08-2008 of Ministry of Finance (Department of Expenditure).

4. A revised concordance table (Annexure) of the pre - 1996, pre-2006 and post 2006 pay scales/pay bands indicating the pension/family pension (at ordinary rates) payable under the above provisions is enclosed to facilitate payment of revised pension/family pension.

5. The pension so arrived at in accordance with para 2 above and indicated in Col. 9 of Annexure will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable before 1.1.2006 and in no case it will be less than Rs. 3500/- p.m.

6. The family pension at enhanced rates (under sub rule (3) (a) of Rule 54 of the CCS (Pension) Rules, 1972 of pre-2006 pensioners/family pensioners revised w.e.f. 1.1.2006 in terms of para 4.1 or this Department's OM No. 1/3/2011-P&PW(E) dated 25.5.2012 would be further stepped up in the following manner:-

(i) In the case of Government servants who died while in service before 01-01-2006 and in respect of whom enhanced family pension is applicable from the date of approval by the Government i.e. 24.9.2012, the enhanced family pension will be stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale in which the Government servant had died, as arrived at with reference to the fitment table annexed to the Ministry of Finance, Department of Expenditure OM No. 1/1/2008-IC dated 30-08-2008. & In the case of HAG and above scales, this will be 50% of the minimum of the pay in revised pay scale arrived at with reference to the fitment table annexed to the above referred OM dated 30-08-2008 of Ministry of Finance, Department of Expenditure.

(ii) In the case of a pensioner who retired before 01-01-2006 and in respect of whom enhanced family pension is applicable from the date of approval by the Government, i.e. 24-09-2012, the enhanced family pension will be stepped up to the amount of pension as revised in terms of para 2 read with para 5 above. In

case the pensioner has died before the date of approval by the Government, i.e. 24.09, 2012 the pension will be revised notionally in terms of para 2 read with para 5 above. The amount of revised enhanced family pension will, however, not be less than the amount of family pension at ordinary rates as revised in terms of Para 3 above.

7. In case the pension consolidated pension/family pension/enhanced family pension calculated as per Para 4.1 of OM No. 38/37/08-P&PW (A) dated 01-09-2008 is higher than the pension/family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

8. All other conditions as given in OM No. 38/37/08-P & PW(A) dated 1.9.2008 as amended from time to time shall remain unchanged.

9. These orders will take effect from the date of approval by the Government, i.e. 24-09-2012. There will be no change in the amount of revised pension/family pension paid during the period 01-01-2006 and 23-09-2012, and, therefore, no arrears will be payable on account of these orders for that period.

10. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

11 All the Ministries/Departments are requested to bring the contents of these orders to the notice of Controller of Accountants/Pay and Accounts Officer's and attached and subordinate Offices under them on a top priority basis. All pension disbursing officers are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

12. Hindi version will follow.

Sd/-

(Tripti P. Ghosh)

Director

To

All Ministries/Departments of Government of India As per mailing list.

The only issue therefore which survives is, with respect to paragraph 9, of the office memorandum aforementioned which makes it applicable with effect from September 24, 2012, and thereby denying arrears to be paid to the pensioners with effect from January 01, 2006.

2. In short, the Government of India has tacitly admitted that it was in the wrong and that the Tribunal is correct.

3. As is well known, the recommendations of the 6th Pay Commission did away

with the hitherto fore applicable pay scales; replacing the same with pay bands having grade pay. For example, pay band I (PB-I) was Rs. 5200-20200 and embraced 12 previous pay scales between Rs. 2750-4400 and Rs. 8000-13500, but with 12 grade pays between Rs. 1800-5400.

4. How would the existing pensioners get pension was decided by the Government as per a resolution dated August 29, 2008 which accepted para 5.1.47 of the recommendations of the 6th Pay Commission to the following effect:-

All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent 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.

5. The respondents had made many submissions in their favour; two of which pertained to the law declared by the Supreme Court in the decision reported as 1990 (4) SCC 270 D.S. Nakara Vs. UOI and (2008) 9 SCC 125 UOI Vs. S.P.S. Vains. The Tribunal has negated said pleas. However, reasoning of the respondents on other plea pertaining to resolution No. 12 aforesaid has found favour with the Tribunal.

6. We find that a Division Bench of the Punjab & Haryana High Court deciding W.P. (C) No. 19641/2009 R.K. Aggarwal & Ors. Vs. State of Haryana & Ors. has referred to the decision impugned by the Tribunal, with reference to an identical question which arose in the State of Haryana because Government of Haryana had adopted the same policy decision of the Central Government. In the decision dated December 21, 2012, in paragraphs 21 to 26, the Division Bench of the Punjab & Haryana High Court has reasoned as under:-

21. On the recommendations made by VI CPC, which stood validly accepted by the Cabinet, it was argued before the Tribunal that principle for determining the pension has been completely altered under the garb of clarification. It was argued that on the basis of the aforesaid resolution/modified parity revised pension of the pre-2006 pensioners shall not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which the pensioner had retired.

22. The Tribunal has accepted this contention and because of this reason, it is

held that subsequent OM's dated 03.10.2008 and 14.10.2008 purportedly issued to clarify para 4.2 of OM dated 01.09.2008 were contrary to the plain meaning of the said para and whereby the criteria and principle for determination of the pension had been completely changed that too when these two subsequent OM's dated 03.10.2008 and 14.10.2008 were issued by the lower authorities having no power to issue such clarification.

23 After considering the arguments of learned counsels for all the parties, we are of the opinion that it is not even necessary to go into the various nuances and nitty gritty's, which are insisted by learned counsels for the petitioners based on D.S. Nakara line of cases and N. Subbarayudu and others and S.R. Dhingra and others (supra), wherein ratio of D.S. Nakara is explained. We proceed on the basis that fixation of cut off date by the government was in order and to this extent we agree with the reasoning given by the Tribunal where similar arguments, as advanced by the petitioners before us, were rejected. The issue can be resolved on the interpretation of OM dated 29.08.2008 itself. It is not in dispute that vide resolution dated 29.08.2008, recommendations of the 6th Central Pay Commission were accepted by the government and the pension was also to be fixed on the basis of formula contained therein. We have already reproduced the recommendations of the 6th Central Pay Commission, as contained in para 5.1.47, which was accepted by the government vide Item No. 12 of resolution dated 29.08.2008 with certain modifications. Based on this resolution, OM dated 01.09.2008 was issued. We have also reproduced para 4.2 thereof. This states in unequivocal terms that "revised pension in no case shall be lower than 50% of the minimum of pay in the pay band plus grade pay corresponding to the pre-revised pay scale ----- ". The clear purport and meaning of the aforesaid provision is that those who retired before 01.01.2006 as well were ensured that their revised pension after enforcing recommendations of the 6th Central Pay Commission, shall not be less than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioners had retired. However, notwithstanding the same and without any provocation, the junior functionaries in the Department of Pension nurtured a doubt "though there was none" and note was prepared on that basis, which led to issuance of OM's dated 03.10.2008 and 14.10.2008. The effect of these two OM's was to make revision in the pension of pre-2006 retirees by giving them less than 50% of the sum of minimum of the pay in the pay band. To demonstrate this, Mr. H.L. Tikku, learned senior counsel appearing in some of these cases drew our attention to the following chart:-

The first 4 columns of the above table have been extracted from the pay fixation annexed with MOF OM of 30th August, 2008 (referred to in para 4.5 (iii) above). Revised pension of S29 works out to Rs. 27,350 which has been reduced to Rs. 23,700 as per DOP OM of 03.10.2008 (para 4.8 (B) below).

24. As per the impugned OM dated 14.10.2008 in the case of S-24 officers the corresponding pay in the Pay Band against 14,300/- is shown as 37,400/-. In

addition, Grade Pay of Rs. 8700/- was given totaling Rs. 46,100/-. Similarly, revisions concerning all the other pay scales were accepted by the aforementioned OM dated 14th October, 2008. The illegality which has been perpetrated in the present matter is apparent from the fact that whereas an officer who was in the pre-revised scale S-24 and receiving a pay of Rs. 14,300/- would now receive Rs. 37,400/- plus grade pay of Rs. 8700/- and his full pension would accordingly be fixed at Rs. 23,050/- (i.e. 50% of 37,400/- pay plus grade pay Rs. 8700/-) pursuant to the implementation of VI CPC recommendations after 01.01.2006, whereas a person retiring before 01.01.2006, who was drawing a pay of Rs. 18,400/- or even Rs. 22,400/- (maximum of scale) in the pre-revised S-29 scale will now be getting pension as only 23,700/- (i.e. 50% of pay of Rs. 37,400/- plus grade pay of Rs. 10,000/-).

25. This has arisen because of resolution dated 29.08.2008 and has resulted because of deletion of certain words in para 4.2 of the OM dated 01.09.2008 or 03.10.2008. This aspect is beautifully demonstrated by the Tribunal in its Full Bench judgment in the following manner with which we are entirely agree:

25. In order to decide the matter in controversy, at this stage, it will be useful to extract the relevant portions of para 5.1.47 of the VI CPC recommendation, as accepted by the Resolution dated 29.08.2008, para 4.2 of the OM dated 1.9.2008 and subsequent changes made in the garb of clarification dated 3.10.2008, which thus read:

26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is clear that the revised pension of the pre-2006 retirees should not be less 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 held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired has been given a go-by by deleting the words "sum of the" "and grade pay thereon corresponding to the pre-revised pay scale" and adding "irrespective of the pre-revised scale of pay plus" implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words "sum of the" "and grade pay thereon corresponding to the pre-revised scale" "and addition of the words "irrespective of the pre-revised scale of pay plus", as introduced by the respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the

recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet. Thus, such a course was not permissible for the functionary of the Government in the garb of clarification, that too, at their own level without referring the matter to the Cabinet.

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 6 th 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.

7. We are in complete agreement with the reasoning of the Division Bench of the Punjab & Haryana High Court and adopt the same and do not burden ourselves any further. We conclude by noting that as regards the substance of the view taken by the Tribunal, even the Central Government accepts its correctness, but insists to make the same applicable prospectively. The writ petitions are dismissed. The decision of the Full Bench of the Tribunal is upheld but without any order as to costs.