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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00797/2017

Thursday this the 3rd day of January, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

K.P.Damodaran Nair,
S/o.V.V.Krishnan Nair,
Postmaster (HSG I) (Retd.),
Aswathy, Kinathil P.O., Udinur,
Trikaripur, Kasargode Dist. - 671 349.

...Applicant

(By Advocate Mr.C.S.G.Nair)

v e r s u s

1. Director of Accounts (Postal),
Kerala Circle, Trivandrum – 695 001.
2. Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. Union of India represented by its Secretary,
Department of Pension & Pensioners' Welfare,
Loknaya Bhavan, Khan Market, New Delhi – 110 001. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 19th December, 2018, the Tribunal on 3rd January, 2019 delivered the following :

ORDER

O.A.No.180/797/2017 is filed by Shri.K.P.Damodaran Nair who retired as Postmaster (HSG-I) from Kanhangad Head Post Office on 30.4.2002, claiming revision of pension based on the Pay Band plus Grade Pay applicable to HSG I with effect from 1.1.2006. The reliefs sought by the applicant is as follows :

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1. To declare that the applicant is entitled for revision of pension based on the pay band plus grade pay applicable to HSG I w.e.f 1.1.2006 ie., to Rs.9230/-.
2. To direct the respondents to issue revised PPO to the applicant specifying the pension on the basis of 50% of the minimum of the pay in the pay band plus grade pay of Rs.18460/- ie. Rs.9230/- w.e.f 1.1.2006 and also the corresponding family pension and grant all consequential benefits including arrears of pension within a stipulated period.
3. To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
4. To grant cost of this O.A.

2. The brief facts of the case are as follows : the applicant joined the Postal Department on 22.10.1963. He had a total service of 38 years 5 months and 8 days. At the time of retirement he was drawing pay in the pay scale of Rs.6500-10500/-. While so, on implementation of 6th Central Pay Commission the pay scale of HSG I was upgraded to Rs.7450-11500 and revised to Rs.9300-34800 with a Grade Pay of Rs.4600/- in PB2. It is submitted that as per the Resolution dated 29.8.2008 of the 6th Central Pay Commission, pension/family pension of pre 2006 pensioners were revised with effect from 1.1.2006. Based on the said Resolution dated 29.8.2008, an OM dated 1.9.2008 had been issued, para 4.2 of which states that *“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 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. In the case of HAG + and above scales, this will be fifty percent of the revised pay scale.”* Thus as per the above OM the applicant submits that he is entitled to be paid Rs.9230/- as pension with effect from 1.1.2006 based on

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the upgraded revised pay band plus grade pay applicable to the post of HSG I.

In support the applicant place reliance on various orders passed by this

Tribunal as well as by different High Courts and also by the Apex Court. In

O.A.No.715/2012 this Tribunal following the order of the Principal Bench in

O.A.No.655/2010 had held as under :

“7. In the light of the above, the settled law is that in no case the pension of the pre-2006 pensioners shall be lower than fifty percent of the minimum of the pay in the Pay Band plus Grade Pay thereon corresponding to the pre revised pay scale from which the pensioner had retired. It means that pension of a pre-2006 retiree has to be first calculated taking into account the revised pay in the pay in the Pay Band plus Grade Pay corresponding to the pay scale from which he retired proportionate to the length of his service and then find what is 50% of the minimum of the Pay Band plus Grade Pay and fix higher of the two as his pension. Hence the applicants are eligible to get the minimum pension in the Pay Band plus Grade Pay of the Deputy Office Superintendent, the post from which they had retired, with effect from 1.1.2006. Accordingly the O.As are allowed as under.”

3. The said order of this Tribunal was challenged before the Hon'ble High

Court of Kerala in OP (CAT) No.8/2014 which was dismissed vide judgment

dated 7.1.2014. The same has also been dismissed by the Hon'ble Supreme

Court. Again, in an identical matter this Tribunal vide order dated 16.3.2017 in

O.A.No.180/526/2016 held as follows :

7. Applicant states that on implementation of the VIth CPC the pay scale of HSG-1 was upgraded to Rs. 7,450-10,500/- in PB-2 with a Grade Pay of Rs. 4,600/- (vide Annexure A3 RP Rules, 2008). It has to be noted that as per the Government of India resolution dated 29.8.2008 on the recommendations of the VIth CPC the pension of the pensioners was fixed as 50% of the minimum of the pay in the pay band plus Grade Pay corresponding to the pay scale from which the pensioner has retired. Based on the Government of India resolution dated 29.8.2008 respondent No. 3 issued OM dated 1.9.2008. Paragraph 4.2 of OM dated 1.9.2008 reads:

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“4.2. The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty per cent 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. In the case of HAG+ and above scales, this will be per cent of the minimum of the revised pay scale.”

8. As the aforequoted instructions in OM dated 1.9.2008 remains in tact without any executive or judicial interference, the pension sanctioning authorities are bound to follow the aforesaid paragraph 4.2 of the aforesaid OM while revising the pension of the pre-1-1-2006 pensioners. Since para 4.2 being the policy decision of the Government of India, the same has to be the guiding principle for determining the VIth CPC revised pension of pre-1.1.2006 pensioners. In the case of the applicant, as observed earlier the pay scales from which he had retired has to be reckoned on the basis of the pay scale of HSG-I prevailing at the time of his retirement. Referring to Annexure A4 fitment table annexed to CCS (RP) Rules, 2008 applicant points out that the VIth CPC revised pay scale of Postmaster HSG-I is Rs. 9,300-34,800/- with Grade Pay of Rs. 4,600/- with effect from 1.1.2006. Therefor, even though the applicant retired from service in the pay scale of Rs. 6,500-10,500/-, as he was given the HSG-I grade after his retirement by virtue of a court decision, the pay scale applicable to HSG-I at the time of his retirement should be his pay pre- revised pay in terms of paragraph 4.2 of OM dated 1.9.2008. Since the corresponding revised pay of Deputy Postmaster HSG-I after the VIth CPC was Rs. 9,300-34,800/- with Grade Pay of Rs. 4,600/- with effect from 1.1.2006, his pension has to be fixed as 50% of the minimum pay in the pay band of Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,600/- or as per the minimum pay in the pay band of Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,600/- as per the fitment table, which ever is more beneficial to the pensioner.

9. Therefore, this Tribunal is of the view that applicant is entitled to a revised pension in terms of paragraph 4.2 of OM dated 1.9.2008 or 50% of the minimum pay in the pay band of Rs. 9,300-34,800/- with Grade Pay of Rs. 4,600/- or as per Annexure A4 fitment table, whichever is beneficial to the applicant. The respondents shall issue revised Pension Payment Order in terms of what is stated above, within a period of two months from the date of receipt of a copy of this order. Ordered accordingly.

4. Further, the applicant calls to his assistance the judgment of the Hon'ble High Court of Delhi in **Ramphal v. Union of India [W.P.(C) No.3035/2016]**. In the said judgment the Hon'ble High Court had quashed and set aside the OM dated 11.2.2009 to the extent that the benefit of upgradation of posts subsequent to the retirement would not be admissible to the pre-2006 pensioners.

5. Per contra the respondents in their reply submitted that in accordance with 6th Central Pay Commission three pre-revised pay scales of Rs.6500-200-10500, Rs.7450-225-11500 and Rs.7500-250-12000 were merged together and replaced with the revised pay structure of grade pay of Rs.4600 in the pay band PB-2 Rs.9300-34800 for those employees who were in service as on 1.1.2006 and not for retirees. The pension is to be fixed corresponding to the pre-revised pay scale from which the pensioner had retired. The respondents bring to notice the clarification issued by the Department of Expenditure dated 22.1.2016 which states that in accordance with para 4.2 of DoP&PW's OM No.38/37/08-P&PW(A) dated 1.9.2008 the revised pension of the pre-2006 retirees shall, in no case, be lower than 50% of the minimum of the pay in Pay Band plus Grade Pay corresponding to the pre-revised pay scale from which the pensioner had retired. The normal corresponding replacement scale for the pre-revised scale is S-12 grade, as notified by this Ministry, based on the recommendations of 6th CPC is Pay Band 2 + GP of Rs.4200 in respect of the pre-revised scale of Rs.6500-10500. It was upgraded to Rs.4600 much later in 2009. As such, the pension of pre-2006 retirees of S-12 grade would need to be fixed in the corresponding revised pay band ie. Rs.9300-34800 with grade pay of Rs.4200/-.

6. Heard Shri.C.S.G.Nair, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, learned counsel for the respondents. Perused all the documents, oral and documentary. The case of the applicant is identical to

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O.A.No.180/526/2016. Hence this Tribunal has no hesitation to hold that the said order squarely covers the field. The O.A is therefore allowed. The applicant is entitled for revision of pension of 50% of the minimum of the pay in the pay band plus grade pay of Rs.18460/- ie. Rs.9230/- with effect from 1.1.2006 and also the corresponding family pension with all consequential benefits including arrears of pension arising therefrom. The respondents shall issue revised Pension Payment Order in terms of what is stated above. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 3rd of January 2019)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00797/2017

1. **Annexure A1** – A copy of the PPO No.9278/LPS/TVM.
 2. **Annexure A2** – A copy of the fitment table annexed to CCS (RP) Rules, 2008.
 3. **Annexure A3** – A copy of the order dated 16.8.2013 in O.A.No.715/2012.
 4. **Annexure A4** – A copy of the order in RP No.2565/2015 in SLP(C) No.6567/2015 dated 28.8.2015.
 5. **Annexure A5** – A copy of the order in O.A.No.526/2017 dated 16.3.2017.
 6. **Annexure A6** – A copy of the representation dated 25.11.2016.
 7. **Annexure A7** – A copy of the judgment in OP (CAT) No.169/2015.
 8. **Annexure A8** – A copy of the judgment of the Hon'ble High Court of Delhi in Ramphal v. Union of India (WPC No.3035/2016) dated 3.8.2016.
 9. **Annexure R1** – A copy of the OM No.38/37/08-P&PW(A) dated 1.9.2008.
 10. **Annexure R2** - A copy of the OM No.38/37/08-P&PW(A) pt.II dated 3.10.2008.
 11. **Annexure R3** – A copy of the OM No.38/37/08-P&PW(A) pt.I dated 14.10.2008.
 12. **Annexure R4** – A copy of the OM No.38/37/08-P&PW(A) dated 20.8.2009.
 13. **Annexure R5** – A copy of the OM No.38/37/08-P&PW(A) dated 11.2.2009.
 14. **Annexure R6** – A copy of the OM No.38/37/08-P&PW(A) dated 28.1.2013.
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