

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00730/2017

DATED THIS THE 18th DAY OF JUNE, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

V.Shankar
S/o.Late Venkataswamy
Aged 80 years, retired as
Senior Telephone Supervisor
Bangalore Telecom District
Residing at No.4
Shaik Nathad Lane
Shivaji Nagar
Bengaluru-560 051.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Ministry of Personnel, Public Grievances & Pensions
Department of Pensions & Pensioners' Welfare
Lok Nayak Bhavan
New Delhi: 110 003.
2. The Secretary
Ministry of Communications
Department of Telecommunications & IT
Sanchar Bhavan, No.20, Ashoka Road
New Delhi-110 001.
3. The Controller of Communication Accounts
Department of Communications
1st Floor, Amenity Block
Palace Road
Bengaluru-560 001.

...Respondents

(By Advocate Shri M.Vasudeva Rao)

ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant aggrieved by the non-revision of his pension by the respondents
has approached this Tribunal seeking the following relief:

- i. *To quash the order No.12/Legal (45)/CP 21/2016 dated nil.08.2017, issued by the respondent No.3, Annexure-A12,*
- ii. *Direct the respondents to fix the pension of the applicant at 50% of the minimum of pay in the pay band (irrespective of the pre-revised scale of pay) plus grade pay corresponding to the pre-revised pay scale with effect from 01.01.2006 and extend consequential benefits accordingly in line with the terms of letter dated 28.03.2017, Annexure-A10.*

2. According to the applicant who is 80 years old, he worked as Chief Telephone Supervisor at the time of his retirement on 30.04.1994. He was in the pay scale of Rs.2000-60-2300-75-3200 and the same was revised to Rs.6500-200-10500 w.e.f. 01.01.1996 following the 5th Pay Commission. Following the 6th Pay Commission recommendation, the revised pension structure came into effect from 01.01.2006. The recommendations of the 6th Central Pay Commission were accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86 i.e. basic pension + dearness allowance (whichever is applicable) + dearness relief of 24% as on 01.01.2006 instead of 1.74(Annexure-A2). Subsequently, vide OM dtd.01.09.2008, it was stipulated 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 minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the applicant had retired(Annexure-A3). Vide OM dtd.13.11.2009, 3 pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and the grade pay of Rs.4600 which corresponds to the pre-revised scale of Rs.7450-11500 was granted to those employees who were in the pay scale of Rs.6500-10500(Annexure-A4). Since the applicant was drawing his pension in the scale of Rs.6500-10500, he became entitled to the grade pay of Rs.4600 in terms of the said OM. As the applicant was not allowed the benefit of the grade pay of Rs.4600 for the purpose of fixation of his pension, he approached this Tribunal along with the

OA.No.170/00730/2017/CAT/Bangalore Bench

similarly situated pensioners in OA.No.253/2012. This Tribunal vide order dtd.08.03.2013 allowed the OA directing the respondents to re-fix the pension of the applicant and others considering the grade pay of Rs.4600 w.e.f.01.01.2006(Annexure-A6). The said order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Karnataka in WP.No.49080-82/2013 and WP.No.55222-55223/2013. Both the WPs were dismissed by the Hon'ble High Court of Karnataka vide order dtd.06.03.2014(Annexure-A7). Again the respondents have approached the Hon'ble Apex Court challenging the above order in SLP(C) No.36148-36150/2013 and connected matters. The SLP was dismissed by the Hon'ble Supreme Court vide order dtd.17.03.2015(Annexure-A8). Therefore, the order of the Tribunal had attained finality. Since the respondents did not implement the order, the applicant submitted a representation to the respondent No.3 on 25.01.2016 with a request to re-fix his pension in accordance with the order passed by the Tribunal(Annexure-A9). Since there is no response, the applicant approached this Tribunal in CP.No.21/2016. However, during the Contempt Proceedings, the respondent No.3 expressed his desire to implement the order of this Tribunal and hence the Contempt Petition was closed. In spite of this, the respondents issued an erroneous order in August, 2017 saying that the existing pension of the applicant w.e.f. 01.01.2006 is Rs.8973 which is more than the minimum pension of Rs.8345 and hence it does not warrant any further revision in the pension. The said order(Annexure-A12) is under challenge in the present OA.

3. The applicant further submits that respondent No.3 in Annexure-A10 communication has calculated the pension payable to the applicant correctly and arrived at the figure Rs.9230 per month. However, in the impugned order of August 2017, the pension was again assessed and conclusion drawn that

the earlier pension was correct. Since the order of the respondents is against the order of this Tribunal, the applicant prays for granting the relief as sought by him.

4. The respondents in their reply statement submit that the applicant was given the benefit of grade pay of Rs.4600 for the purpose of fixation of pension as per the orders of this Tribunal in OA.No.253/2012 dtd.8.3.2013 after duly following the procedure in respect of calculation of pension in concerned orders of Govt. of India issued from time to time in respect of fixation of pension and pay in such case of upgradation of Grade Pay. They referred to para 4 of OM dtd.13.11.2009(Annexure-R1) saying that the revised pay of the Government servants who were in the pre-revised pay scale of Rs.6500-10500 and who have been granted grade pay of Rs.4600 are to be fixed in terms of Rule 6 of CCS(RP) Rules 2008 in accordance with illustration 4A annexed to CCS(RP) Rules 2008. They have also referred to OM dtd.13.10.2008(Annexure-R2) issued by the Ministry of Finance in respect of fixation of pay in the pay bands where posts have been upgraded as a result of recommendations of Sixth CPC. According to para 2 of the said OM, in cases of upgradation of posts as a result of recommendations of Sixth CPC, the fitment table attached with OM of even number dated 30.8.2008(Annexure-R3) corresponding to pre-revised scale shall be used for the purpose of determination of pay in the pay band. To the pay in the pay band so determined, the grade pay corresponding to the upgraded post is to be added. This will be revised pay of the Government servant who has been upgraded as a result of Sixth CPC recommendation. Further in para 3 of the OM dated 13.10.2008 the fixation of pay of CPMF constables whose pay scale has been upgraded from pre-revised pay scale of Rs.3050-4590 to Rs.3200-4900 corresponding to grade pay of Rs.2000 in PB1 has been

illustrated. The Govt. servant drawing a pay of Rs.3575/- in pre-revised pay scale of Rs.3050-4590 has been fixed at Rs.6650 in the pay band PB1 5200-20200 corresponding to pre-revised scale of Rs.3050-4590 and the grade pay of Rs.2000 corresponding to pre-revised scale of Rs.3200-4900 has been added to arrive at the revised basic pay of Rs.8650 on 1.1.2006. Accordingly, the minimum pay in pay band corresponding to pre-revised pay scale of Rs.6500-10500 in the fitment table is Rs.12090. As per para 4.2 of OM dated 1.9.2008(Annexure-R4) read with OM dated 28.1.2013 & 30.7.2015(Annexure-R5 & R6 respectively) sum of 50% of minimum of pay in the pay band corresponding to pre-revised scale of Rs.6500-10500 and grade pay of Rs.4600 amount to Rs.8345/- (i.e. 50% of (12090+4600)). The detailed calculation of pension under various circumstances is given in Annexure-R7. The respondents further submitted that the speaking order conveying the fixation of pension of Rs.8973 and minimum pension of Rs.8345 applicable in the case of the applicant has been issued in accordance with the approval conveyed vide DoT Hqrs. Letter dtd.18th August, 2017(Annexure-R8) after due consultation with Department of Pensions & Pension welfare and Department of Expenditure. Therefore, they submit that the contention of the applicant regarding fixation of pension is not correct and he is not entitled to any further relief.

5. The applicant has filed a rejoinder in which he mentioned that the pension of the applicant has been fixed at Rs.8973 taking into account the minimum pay of the pay band + grade pay of Rs.4200. The pay scale of Rs.6500-200-10500 has been upgraded to Rs.7450-11500 with the grade pay of Rs.4600 w.e.f. 01.01.2006 in terms of the OM dtd.13.11.2009(Annexure-A4). Therefore, the pension of the applicant requires to be fixed taking in to account his pay in PB-2 Rs.7450-11500 + Grade Pay of Rs.4600 and not otherwise. The

contention of the respondents that the upgradation of the pay scale Rs.6500-200-10500 to Rs.7450-11500 in terms of OM dtd.13.11.2009 is not applicable to the retired employee is not correct. Therefore, the calculation made by the respondents is contrary to the orders of the Full Bench of CAT, N.Delhi in OA.No.655/2010 dtd.01.11.2011 which has been confirmed by the Delhi High Court and subsequently by the Hon'ble Supreme Court.

6. The respondents have filed additional reply statement reiterating the contentions already made in the reply statement and not come up with any new point.
7. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while highlighting the contention already made in the OA specifically drew attention to para-8 of the earlier order of the Tribunal dtd.08.03.2013 in OA.No.231 & 253/2012 which had referred to the order passed in OA.No.655/2010 of the Principal Bench and reference to the principle enunciated by the 6th CPC for the future revision of pensions to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. He submitted that the applicants had contended that the revised grade pay of Rs.4600 corresponding to the scale of Rs.7500-11500 has to be allowed to them in terms of the recommendation of the 6th Pay Commission and OM dtd.13.11.2009. This benefit is not only applicable to the employees who are working as on 01.01.2006 but also to those who retired before 01.01.2006. He contended that when Grade Pay of Rs.4600 is allowed corresponding to scale of Rs.7400-11500, the stand taken by the respondents that it has to be based on pay scale of Rs.6500-10500+4600(GP) is clearly

erroneous. Further in terms of OM dtd.28.01.2013 relating to the revision of pension of pre-2006 pensioners, the minimum pension applicable to the scale of PB-2 i.e. Rs.7450-11500 with Grade Pay of Rs.4600 comes to Rs.9230. Therefore, the stand taken by the respondents is completely erroneous and the direction should be issued to them to grant minimum pension of Rs.9230 from .01.01.2006.

8. The Learned Counsel for the respondents, on the other hand, referred to Annexure-R7 showing calculation of pension and saying that the applicant is getting the pension of Rs.8973 in corresponding revised pay scale in 5th Pay Commission i.e. Rs.6500-10500 and only grant of Grade Pay of Rs.4600 corresponding to Rs.7450-11500 has been allowed. When a query was made that if that is their interpretation, they should have stated the same in that OA itself saying that even if Grade Pay Rs.4600 is allowed it would not result in any difference in the entitled pension and when it would not have resulted in any benefit to the applicant then there was no justification on their part to approach the Hon'ble High Court and Hon'ble Apex Court in this matter, they had no answer to the same.
9. We have carefully considered the facts of the case and submissions made by either side. The Office Memorandum issued by the Ministry of Finance on 13.11.2009 is quite clear. Para-3 of the said OM reads as follows:

3. Consequent upon the Notification of CCS(RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries/departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 1.1.2006. Further, in terms of the aforementioned provisions of CCS(RP) Rules, 2008, in case a post already existed in the pre-revised scale of

Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

10. When the applicant approached this Tribunal in OA.No.231/2012 & connected matters, this particular issue was raised and the applicant contended that they are entitled to the Grade Pay of Rs.4600 corresponding to pre-revised pay scale of Rs.7450-11500. When the grade pay corresponding to particular pay scale is allowed, it obviously means that it is corresponding to that particular pay scale only and not the lower pay scale. Therefore, in terms of OM dtd.13.11.2009 as well as from the order of Tribunal, it is quite clear that the applicant had been allowed Grade Pay of Rs.4600 which corresponds to Pay Scale of Rs.7450-11500 only. The presumption of the respondents that the pay scale shall be retained at Rs.6500-10500 and only the grade pay would be changed from Rs.4200 to Rs.4600 is therefore illogical and unjustified. In terms of revision of pension of pre-2006 pensioners vide OM dtd.28.01.2013, the minimum pension corresponding to pay scale of Rs.7450-11500 with grade pay of Rs.4600 comes to Rs.9230. Therefore, the pay arrived at by the respondents by giving multiplication of factor which is Rs.8973 should have been changed to Rs.9230 and the applicant is entitled to a minimum pension of Rs.9230. The stand taken by the respondents to only increasing the grade pay keeping the earlier pay scale of Rs.6500-10500 as it is is completely wrong and does not stand to any reason. Moreover, if this was the interpretation of the respondents according to which the order of the Tribunal in OA.No.231/2012 will not result in any change in the pension of the applicant and similarly placed persons, there was no justification on their part for approaching the Hon'ble High Court against the order of the Tribunal and thereafter Hon'ble Supreme Court.

11. The OM dtd.13.11.2009 had clearly stipulated that the posts which were in the

OA.No.170/00730/2017/CAT/Bangalore Bench
pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 will be granted grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 01.01.2006. This makes evidently clear that the applicants were to be considered against the pay scale of Rs.7450-11500 with grade pay of Rs.4600. The revised pay and pension has to be calculated on that basis and that comes to Rs.9230. The manner of computing the pension by the respondents is therefore completely wrong and bereft of any logic. Therefore, we hold that the order of August 2017 at Annexure-A12 is completely erroneous and unjustified and the same stands quashed. The respondents are directed to grant revised pension of Rs.9230/- to the applicant w.e.f. 01.01.2006 along with consequential benefits within a period of one(1) month from the date of receipt of copy of this order.

12. The OA is accordingly allowed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00730/2017

- Annexure A1: Copy of the revised pension fixation statement dtd.22.3.1998
- Annexure A2: Copy of the resolution of the Government dtd.29.8.2008
- Annexure A3: Copy of the O.M. dtd.01.09.2008
- Annexure A4: Copy of the O.M. dtd.13.11.2009
- Annexure A5: Copy of the revised pension fixation statement dtd.09.09.2011
- Annexure A6: Copy of the order dtd.08.03.2013 in OA.No.231 & 253 of 2013
- Annexure A7: Copy of the order dtd.6.3.2014 in WP.No.49080-82 of 2013 & connected matters
- Annexure A8: Copy of the order dtd. 17.03.2015 in SLP (C) No.36148-36150 of 2013 & connected matters
- Annexure A9: Copy of applicant's representation dtd.25.01.2016
- Annexure A10: Copy of the letter dtd.28.03.2017
- Annexure A11: Copy of the order dtd.12.04.2017 in CP.No.231 of 2015
- Annexure A12: Copy of the order dtd. Nil.8.2017

Annexures with reply statement:

Annexure R1: Copy of OM dtd.13.11.2009
Annexure R2: Copy of clarification vide OM dtd.13.10.2008
Annexure R3: Copy of OM dtd.30.08.2008
Annexure R4: Copy of OM dtd.01.09.2008
Annexure R5: Copy of OM dtd.28.1.2013
Annexure R6: Copy of OM dtd.30.7.2015
Annexure R7: Copy of detailed calculation of pension under various circumstances
Annexure R8: Copy of DOT Hqrs. Letter dtd.18.8.2017

Annexures with rejoinder:

-NIL-

Annexures with addl.reply statement:

-NIL-
