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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 3076 OF 2015

Kottarathil Joseph … Petitioner
Vs.
Union of India & Ors. … Respondents

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Mr. Saseendran Pillai, for the Petitioner.
Ms. Neeta Masurkar with D. N. Mishra, for the Respondent No. 1 UOI

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CORAM : V. M. KANADE, &
M. S. SONAK, JJ.

DATE : AUGUST 9, 2016

PC.

1. Rule. Rule is made returnable forthwith and by consent of parties, petition is taken up for final hearing.

2. The Petitioner is challenging the order passed by the Central Administrative Tribunal, dismissing his application by a judgment and order dated 4.7.2014.

3. The brief facts, which are relevant for the purpose of deciding the petition, are as under:

. The Petitioner was working as the Dy. Director in the

Forward Markets Commission, and he retired after attaining the age of superannuation on 1st April, 1984. It is not in dispute that therefore he is a pre-2006 pensioner i. e. he is retired before the recommendation of the 6th Central Pay Commission had come into force.

4. After the recommendation of the 6th Pay Commission came into effect from 1.1.2006, his pension had to be fixed in accordance with the said recommendation. The principal grievance of the Petitioner was that while fixing his pension, the grade pay as per the 6th Central Pay Commission has been reduced by 50% though he is entitled to the full grade pay of Rs. 6,600/-, meant for the corresponding scale (rank pay) for his post at the time of his retirement. The Petitioner filed the original application before the CAT seeking the said relief.

5. The department of pension and the Ministry of Personnel, Public Grievances & Pensions issued O. M. dated 1st September, 2008 and it took into consideration the revision of the pension of pre-2006 pensioners. According to the Petitioner, the said rule is the relevant provision, which provided that the pensioner should not get revised pension, which would 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 Petitioner has retired. The contention of the Petitioner was that while calculating this 50% of the pay, the formula which should have been adopted was that 50% of the minimum pay in the pay band should be calculated by dividing it by 2 and to this the entire grade pay corresponding to the pre-revised pay scale should be added. It is submitted that if “A” is the pay in the pay band, and “B” stands for grade pay, then instead of adding “A+B” and dividing by 2 while calculating the minimum pension, the formula should be “A/2 + B”.

6. The first submission of the Petitioner that while calculating the minimum pay in the pay band, the complete pay band should be taken into consideration, was accepted. His contention was that if the pay band is between, e. g. 15,600 to 18,000, the figure of 18,000 should be considered and not 15,600. This contention was accepted by the Tribunal. The other contention, however, was not accepted.

7. The learned counsel appearing for the petitioner has urged that the view taken by the Tribunal is not correct. It is

submitted that what was recommended by the 6th Central Pay Commission was lateron changed and since the wording was changed the submission made by the Petitioner ought to have been accepted. We are unable to accept the said submission.

8. The Central Administrative Tribunal has considered the judgments delivered by various Benches of the CAT and accepted the first submission of the Petitioner, however, it did not accept the second submission by giving cogent reasons.

9. The relevant provision in the O. M. dated 1st September, 2008, viz. para 4.2, reads as under:

> “4.2 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. In the case of HAG + and above scales, this will be fifty percent of the minimum of the revised pay scale.”

10. Upon plain reading of the said paragraph, it is abundantly clear that while calculating minimum pension, the minimum of the

pay in the pay band + the grade pay has to be divided by 2 and 50% of the said amount should be arrived at and a care has to be taken to see that pension should not be less than 50% of that amount. The contention of the Petitioner is, therefore, without any substance.

11. In our view, there is no infirmity or illegality in the order passed by the Tribunal. Writ petition is therefore dismissed and the rule is accordingly discharged.

Sd/-
[M. S. SONAK, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath