IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.27122 of 2016
WMP No.23298 of 2016

1.Union of India
Rep. by the General Manager
Southern Railway
Park Town, Chennai.

2.The Financial Advisor and
Chief Accounts Officer,
Southern Railway,
Parktown, Chennai-600 003. .. Petitioners

Vs.

1.The Registrar,
Central Administrative Tribunal,
Chennai.

2.Azeezullah Baig .. Respondents

WRIT Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of 1st respondent in O.A.No.541 of 2014, dated 09.09.2015 and quash the same.

For Petitioners: Mr.V.Radhakrishnan, Senior Counsel for M/s.P.T.Ramkumar

For Respondent : Mr.L.Chandrakumar for R2
R1 :Tribunal

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order, made in O.A.No.541 of 2014, dated 09.09.2015, by which, the Central Administrative Tribunal, Madras Bench, Chennai, directed the petitioners herein to re-fix pension of the second respondent at 50% of the minimum of the pay Band plus Grade pay of VI pay Commission pay scale held by a Grade I Cashier and grant him consequential benefits, within a period of three months from the date of receipt of a copy of order.

2. Facts leading to the writ petition are that the second respondent retired as a Senior Cashier in the services of the petitioners on 31.10.1993 while he was on the pay scale of Rs.1400-2300. Accepting the V Central Pay Commission recommendations, his pension was revised with reference to the corresponding pay scale of Rs.5000-8000. However, in 2004, a revised Pension Payment Order was made in which the corresponding pay scale was indicated as Rs.4500-7000 without altering the revised pension. After orders were issued relating to VI Central Pay Commission, the basic pension of the second respondent was fixed with reference to the Pay Band I of Rs.5200-20200 plus Grade Pay of Rs.2800/-, vide impugned order, dated 26.11.2009. The second respondent has contended that he is entitled to be given pension corresponding to pay band II of Rs.9300-34800 plus Grade pay of Rs.4200/- and accordingly, his revised pension should be worked out to Rs.6750/- per month. Aggrieved by the said order he has filed O.A.No.541/2014.

3. Before the Tribunal, the petitioners herein, resisted the plea of the second respondent on the basis of the action taken by them in 2004 to correct the pay scale of Rs.5000-8000 to Rs.4500-7000 as per the V Central Pay Commission recommendations. This was done as per the letter of the Railway Board dated 20.08.2001 issued in consultation with the DOP & PW, in which it was clarified that the provision "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 01.01.1996 of the post last held by the pensioners" should mean that "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 01.01.96 of the scale of pay held by the pensioner at the time of retirement/death while in service....". Consequent to the implementation of the VI Central Pay Commission, pension of the second respondent was revised as Rs.6057 in terms of the Railway Board letter F(E) III/2008/PN1/12 dated 18.11.2008 and the pension payment Order dated 26.11.2009, in which the VI CPC scale and Grade pay were correctly mentioned. It was further stated that second respondent's pension has been equated only as per the table since 50% of the minimum of the pay in the pay bank (Rs.5200) and Grade Pay (Rs.2800) works out to Rs.4000 which is less than the pension received by the second respondent as per the table. The claim of the second respondent to step up his minimum pension to Rs.6750 based on the Pay Band minimum (Rs.9300) and Grade pay (Rs.4200) cannot be accepted to since the same is not corresponding scale to the scale of pay held by the pensioner in V CPC.

4. After hearing the learned counsel appearing for the parties, the Tribunal, vide order, dated 09.09.2015, quashed the rejection order, dated 29.08.2011 and consequently, directed the petitioners herein to re-fix the pension of the second respondent at 50% of the minimum of the pay Band plus Grade pay of VI Pay Commission pay scale held by a Grade I Cashier and grant him consequential benefits, within a period of three months from the date of receipt of a copy of order. Paragraphs 7 and 8 of the said order are hereunder:

> "7. After carefully considering the submissions, we are of the view that the judgment of the Hon'ble Apex Court relates to V pay Commission recommendations and the policy decision dated 17.12.1998 clarified by Executive instructions dated 11.05.2001. A large number of OAs relating to the pension that should be allowed on the basis of VI pay Commission recommendations and the policy decisions thereupon have since been decided in favour of the pensioners by various Benches of this Tribunal and duly upheld by the higher courts. After examining the facts of the case, we are satisfied that the case of the applicant is covered by the order of the Ernakulam Bench of this Tribunal in OA 1135/2013 dated 12.06.2015. It has been held therein that a pre 2006 retiree is entitled to get 50% of the minimum of the pay in the revised pay Band plus Grade pay of the post from which he retired. We are, therefore, inclined to allow the relief sought by the applicant.
>
> 8. We accordingly, direct the respondent to re-fix the pension of the applicant at 50% of the minimum of the Pay Band plus Grade pay of the VI Pay Commission pay scale held by a Grade I Cashier and grant him consequential benefits, within a period of three months from the date of receipt of a copy of this order. No order as to costs."

5. Being aggrieved by the same, the instant writ petition has been filed, on the following grounds,

(i) Tribunal has failed to consider that the facts in the case decided in Central Administrative Tribunal, Ernakulam Bench, are totally different from the case in hand and applying the principles laid down by the Ernakulam Bench in this case is not relevant and is totally illegal and has to be set aside;

(ii) Tribunal failed to appreciate the fact that the second respondent is not entitled for re-fixation of pension from the pay band of Rs.5200 and the grade pay of Rs.2800 to 9300 and grade pay of Rs.4200, since the same is not corresponding to the scale of pay held by the second respondent in 5th pay commission;

(iii) Tribunal failed to appreciate the fact that the 2nd respondent's basic pension was revised and given effect to by order dated 24.05.1999 considering the implementation of the 5th pay commission with reference to the scale of pay held at the time of his retirement;

(iv) Tribunal, without giving any proper reason allowed the application filed merely relying on the judgment rendered by the Ernakulam Bench is totally incoherent and has to be set aside;

(v) Tribunal failed to see that the second respondent's prayer seeking to step up his minimum pension to Rs.6750/- is inadmissible, as he does not fall under the specific scale of pay corresponding to the scale of pay, as recommended by the 6th pay commission. Any stepping up of his basic pension to Rs.6750/-, would tantamount to violation of pension rules and orders issued by DOP&PW from time to time;

(vi) Tribunal also failed to note that the upgraded pay is entitled only to the serving employees as per the recommendations of successive pay commissions and the same is not allowed to the retirees and that the Tribunal failed to appreciated that the revised pay as per the 6th pay commission based on which instructions have been issued which subsequently came to be upheld by the Supreme Court in the case of K.S.Krishnasamy and others Versus Union of India and Another reported in (2006) 13 SCC 215 and discarding this judgment, the Tribunal has passed the order which is totally incorrect.

6. Mr.Azeezulla Baig, second respondent herein, has filed a detailed counter affidavit and contended that while working as Senior Cashier, carrying the scale of pay of Rs.1400-2300, he retired from Railway Service, on attaining the age of superannuation, on 31.10.1993. On implementing the recommendations by the Vth Central Pay Commission, a revised pension payment order, dated 24.5.1999 was made and according to the said PPO, 2nd respondent's original pension of Rs.1800/-, with reference to the scale of pay Rs.1400-2300, held at the time of retirement, was correspondingly revised as Rs.5000-8000, with reference to RBE 138/1997 and thereby, his pension was revised as Rs.2680/-.

7. The 2nd respondent has further contended that he was served with a revised pension payment order, dated 27.02.2004, in which, the corresponding scale was shown as Rs.4500-7000, without altering the pension already revised, vide order, dated 24.05.1999. Further, on implementing the recommendations by the 6th Pay Commission, the 2nd respondent’s basic pension was

revised as Rs.6057/-, with reference to PB1 (RS. 5200-20200) plus Grade Pay Rs.2800/-, vide impugned order, dated 26.11.2009, instead of PB 2 (Rs. 9300-34800) plus Grade Pay Rs.4200/-, in which event, on the principle of protected minimum pension, respondent's revised pension should have been fixed as Rs.6750/-. Since the impugned revision was contrary to the principles laid down by the 5th Pay Commission and continued to be adopted while implementing the recommendations by the 6th Pay Commission, representations submitted in this regard were not responded and therefore, Original Application No.541 of 2014 was preferred, on the ground that denial of revision of pension, not less than 50% of the minimum in PB II with Grade Pay of Rs.4200/- i.e., Rs.6750/-, is in gross violation of,

> (a) Railway Board's letter, dated 15.01.1999, which postulates that if the pension/family pension of all the pre 1996 retirees on revision/consolidation is "less than 50% or 30% of the minimum pay in the revised scales of pay introduced with effect from 01.01.1996, corresponding to the scale of pay held at the time of retirement, the same shall be raised to 50% or 30% of the minimum pay in the corresponding revised scales of pay.
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> (b) Railway Board's No.F(E) III/2000/PN1/13, dated 02.03.2000,
>
> (c) Office Memorandum No.45/1Q/98-P&PW (A), dated 17.12.1998, the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare.

8. The 2nd respondent has further submitted that the Tribunal, overruling the contentions that the corresponding revised pay was not PB II with Grade Pay of Rs.4200/-, held as follows:

> "a pre-2006 retiree is entitled to get 50% of the minimum of the pay in the revised Pay Band phis Grade Pay of the post from which he retired. We are therefore inclined to allow the relief sought by the applicant....."

and further ordered as follows,

> ".......We accordingly direct the respondents to refix the pension of the applicant at 50% of the minimum of the Pay Band plus Grade Pay of the VI Pay Commission pay scale held by a Gr.I Cashier and grant him consequential benefits...................;

9. The 2nd respondent has further submitted that Rs.1400-2300/- held by Grade I Cashiers was correspondingly revised as Rs.5000-8000, by the Vth Central Pay Commission, which was correspondingly revised as PB II plus Grade Pay of Rs.4200/-, by the 6th Central Pay Commission and that Rs.4500-7000 & PB I plus

Grade Pay of Rs.2800/-, are normal replacement scales. According to the FIRST SCHEDULE in RBE No.133/97, dated 08.10.1997, normal replacement scales shall be revised pay scales for the posts carrying the present scales in Group 'D', 'C', 'B' & 'A', except posts for which revised scales are notified separately and in terms of Memorandum Explanatory Notes to Rule 13.2 of the Railway Services (Revised Pay) Rules, 1997, the corresponding scales par Grade I Cashiers is Rs.5000-8000. In view of the fact that the Government have decided, vide letter, dated 10.02.1998, on the recommendation for consolidation of pension/family pension, by updating them, by notionally fixing their pay as on 01.01.1986, by adopting the same formula for the serving employees and thereafter, for the consolidation of their pension/ family pension, as on 01.01.1986, they may be treated alike, those who have retired on or after 01.01.1986 and was adopted by the 6th Central Pay Commission and therefore, the intention of the rule makers was that the revised pension of pre-retirees should not be less than atleast 50% of the minimum of the pay scale revised for the serving employees.

10. On the decision made in K.S.Krishnasamy v. Union of India reported in (2006) 13 SCC 215, the 2nd respondent has further submitted that in the said case, the particular post carried the scale of pay of Rs.1500-2000, which was revised as Rs.3700-5000 on the recommendations by the 4th Central Pay Commission and as Rs.12,000-16,500, by the 5th Central Pay Commission and some among the incumbents, who have completed 13 years, were extended with higher scale of pay Rs.2000-2250, Rs.4500-5700, and Rs.14,300-18,300 i.e., for the same post, there were two correspondingly revised scales of pay, whereas, in the case of the post held by the respondent the entire strength was carrying the scale of pay Rs.425-640 revised as Rs.1400-2300, and as Rs.5000-8000.

11. The 2nd respondent has further contended that in K.S.Krishnasamy's case, those whose scale of pay was correspondingly revised as lesser scale of pay have sought for minimum pension protection with reference to higher correspondingly revised pay taking advantage of the recommendation "not less than 50% of the minimum of the revised pay of the post last held by the retirees" as such the Government issued clarification dated 11.05.2001, replacing the "post last held" with "pay scale last held", whereas, in the case of the 2nd respondent, the claim for correspondingly revised scale of the post in its entirety was upheld.

12. Referring to the order of this Court in W.P.Nos.24444 to 24451 of 2001, which upheld the clarification, dated 11.05.2001, the 2nd respondent has contended that the correspondingly revised scale would mean the revised pay scale with reference to current holders of the post held by the

retirees. At Paragraph 9 in the abovesaid order, this Court held as follows:

> "9. ....to look into the office memorandum dated 17.12.1998 and the clarification dated 11.5.2001. Under the office memorandum dated 17.12.1998 it is declared that the pension payable shall not be less than 50% of the minimum of the revised scale of pay introduced with effect from 1.1.1996 for the post last held by the pensioner at the time of his retirement. The post last held by the pensioner in each of the writ petition carried a pay scale of Rs.1,500 - 2,000 and the said scale of pay, pursuant to the 5th Pay Commission recommendation, stands revised as Rs.12,000 - 16,500 with effect from 1.1.1996. There is no dispute that each of the pensioner is getting pension fixed on the revised scale of pay. The post referred to in the office memorandum dated 17.12.1998 is relatable to the scale of pay. Post and the scale of pay cannot be separated. Only to clarify this, the proceeding dated 11.5.2001 had come to be issued. Under that clarification, it is made clear that the expression "post last held by the pensioner" shall mean the scale of pay held by the pensioner at the time of his superannuation/retirement. Therefore reading the office memorandum dated 17.12.1998 it is clear to our mind that the pensioners concerned in this case can have their pension fixed only on the revised scale of pay of Rs. 12,000 - 16,500 introduced with effect from 1.1.1996 and not on any other scale, since admittedly they were only drawing a scale of pay on the corresponding previous scale of pay when they retired. This position, as could be seen clearly from the office memorandum dated 17.12.1998, stands clarified by the latter clarification dated 11.5.2001. Since the Hon'ble Supreme Court of India in the judgment referred to above namely, S.S. Grewal v. State of Punjab and Ors.. 1993 Supp (3) SCC 234, had held that the clarification must be read as part of the original order, reading the clarification dated 11.5.2001 with the office memorandum dated 17.12.1998. it is not possible to reach any other conclusion other than the conclusion as reached by us above. Consequently, the order of the Central Administrative Tribunal challenged in these writ petitions is set aside and the writ petitions are allowed."

13. The 2nd respondent has further submitted that in CWP No.9581-CAT of 2011 by the Hon’ble Punjab & Haryana High Court held that minimum pension of the pre 1996 retirees shall be protected not less than 50% of the lesser pay scale originally

revised with effect from 01.01.1996 by the 5th Central Pay Commission, but upgraded to a higher pay scale with effect from 01.11.2003 consequent 2003 cadre restructuring, which decision is confirmed by the Hon'ble Apex Court SLP No. 11262 of 2012 and therefore, the contention relying on a decision in K.S.Krishnasamy's case, is untenable in law.

Heard the learned counsel appearing for the parties and perused the materials available on record.

14. Office Memorandum on 17th December, 1998 was issued to the following effect:-

> "The President is now pleased to decide that w.e.f. 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner."

15. The clarification issued by the Government of India, vide Office Memorandum, dated 11.05.2001, reads as follows:-

> "In the course of implementation of the above order, clarifications have been sought by Ministries/Departments of the "post last held" by the pensioner at the time of his/her superannuation. The second sentence on O.M. dated 17.12.1998, i.e. "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the post last held by the pensioner", shall mean that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as 01.01.96, of the scale of pay held by the pensioner at the time of superannuation/ retirement."

16. In the case on hand, the 2nd repsondent, working as Senior Cashier, carrying the scale of pay of Rs.1400-2300, retired from Railway Service, on attaining the age of superannuation, on 31.10.1993. While implementing the recommendations by the Vth Central Pay Commission, a revised pension payment order, dated 24.5.1999 was made, revising his pension as Rs.2,680/-, on the ground that the original pension of Rs.1800/-, with reference to the scale of pay Rs.1400-2300, held at the time of retirement, was correspondingly revised as Rs.5000-8000, with reference to RBE 138/1997. However, in the revised pension payment order, dated 27.02.2004, the corresponding scale was shown as Rs.4500-7000, without altering the pension already revised, vide order, dated 24.05.1999. While implementing the recommendations by the 6th Pay Commission, his

basic pension was revised as Rs.6057/-, with reference to PB1 (RS. 5200-20200) plus Grade Pay Rs.2800/-, instead of PB 2 (Rs. 9300-34800) plus Grade Pay Rs.4200/-. The said revision is challenged before the Tribunal on the ground that denial of revision of pension, not less than 50% of the minimum in PB II with Grade Pay of Rs.4200/- i.e., Rs.6750/-.

17. According to the 2nd respondent, Rs.1400-2300/- held by Grade I Cashiers was correspondingly revised as Rs.5000-8000, by the Vth Central Pay Commission, which was correspondingly revised as PB II plus Grade Pay Rs.4200/-, by the 6th Central Pay Commission and that Rs.4500-7000 & PB I plus Grade Pay of Rs.2800/-, are normal replacement scales, which according to FIRST SCHEDULE in RBE No.133/97, dated 08.10.1997, shall be the revised scales for the posts, carrying the present scales in Group 'D', 'C', 'B' & 'A', except the posts, for which, revised scales notified separately and therefore, as rightly contended by the 2nd respondent, the corresponding scale for Grade I Cashiers, is Rs.5000-8000. Decision in K.S.Krishnasamy v. Union of India reported in (2006) 13 SCC 215, is distinguishable.

18. The Tribunal has rightly considered the above memorandums and following the decision of the Ernakulam Bench of the Tribunal in O.A.No.1135 of 2013, dated 12.06.2015, wherein, it has been held that a pre 2006 retiree is entitled to get 50% of the minimum of the pay in the revised pay Band plus Grade pay of the post from which he retired, directed the respondent to re-fix the pension of the 2nd respondent at 50% of the minimum of the Pay Band plus Grade pay of the VI Pay Commission pay scale held by a Grade I Cashier and grant him consequential benefits, within a period of three months from the date of passing of the order.

19. In the light of the above, no interfere with the order of the Tribunal in O.A.No.541 of 2014, dated 09.09.2015, is required.

In the result, the writ petition fails and accordingly, dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

skm

To

The Registrar,
Central Administrative Tribunal,
Chennai.

+1 CC to Mr.P.T.Ramkumar, Advocate sr 3501.
+1 CC to Mr.L.Chandrakumar, Advocate sr 3475.

Writ Petition No.27122 of 2016
and
WMP.No.23298 of 2016

SJ(CO)
SP(10/04/2019)