

In the High Court of Judicature at Madras

Reserved on	04.02.2019
Pronounced on	11.02 .2019

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mr.Justice P.RAJAMANICKAM

W.P.No.7909 of 2017 and
W.M.P.No.8654 of 2017

1. The Union of India rep. By
the Secretary,
Department of Pension and Pensioner's Welfare
Ministry of Personnel, Public Grievances
and Pensions, 3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi - 110 003
2. The Secretary
Department of Personnel and Training
Government of India, New Delhi - 110 001
3. The Director (PP)
Department of Pension and Pensioner's Welfare
Ministry of Personnel, Public Grievances and Pensions,
Lok Nayak Bhavan, New Delhi - 110 001
4. The Deputy Secretary (H.Qrs)
Central Board of Direct Taxes (Income Tax)
Department of Revenue, Ministry of Finance,
Room No.255, North Block, New Delhi - 110 001
5. The Senior Accounts Officer (Pensions)
O/o the Deputy Controller of Accounts (CBDT)
Zonal Accounts Office, New Block (Ground Floor)
Aayakar Bhavan, 121, Nungambakkam,
Chennai - 600 034 ..Petitioners

Vs.

1. The Central Administrative Tribunal,
Chennai Bench, Rep. By its Registrar,
High Court Building,
City Civil Court Complex, Chennai

2. S.Bapu
Chief Commissioner of Income Tax (Retd)
No.4, Mahadev Apartments,
8, Baskarapuram, Mylapore,
Chennai - 4

...

Respondents

Prayer: Writ Petition filed under Article 226
Constitution of India to issue a Writ of Certiorari by
calling for the records of the 1st Respondent / the
Central Administrative Tribunal, Chennai Bench in
OA/310/00095/2015 dated 21.04.2016 and quash the same.

For Petitioners : Mr.V.Vijay Shankar

For Respondents : Mr.Karthik Rajan for R2

O R D E R

Heard both sides.

2. The Petitioners have filed a instant Writ
Petition seeking to call for the records in
OA/310/00095/2015 passed by the 1st Respondent / Central
Administrative Tribunal, Chennai Bench dated 21.04.2016.

3. Earlier, in OA/310/00095/2015 filed by the 2nd
Respondent [As an Applicant] against the Union of India
rep. By the Secretary, Department of Pension &
Pensioners' Welfare, Ministry of Personnel, Public
Grievances and Pensions, 3rd Floor, Lok Nayak Bhavan, Khan
Market, New Delhi - 110 003 and Four others, the 1st
Respondent / Tribunal had observed that the Applicant's
claim [2nd Respondent in the present Writ Petition] for
refixation of his pension based on the scale of HAG +
75,500/- - 80,000/- is tenable with effect from
23.05.2013 and further, the Respondents therein were
directed to refix the pension and pay the arrears also
within a period of three months from the date of receipt
of copy of this order.

4. The Learned Counsel for the Petitioners contends
that the 1st Respondent / Tribunal had failed to
appreciate that the 2nd Respondent had voluntarily retired

on 12.04.1999, while serving as Chief Commissioner of Income Tax and that the Sixth Central Pay Commission made the following recommendation for Revision of Pension of past pensioners:

'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 01.04.2004) 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 01/01/2006. 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. (Para 5.1.17 of the Report)'

5. The Learned Counsel for the Petitioners submits that the aforesaid recommendation of the Sixth Central Pay Commission was accepted by the Government, as per Resolution dated 29.08.2008 with a modification that fixation of pension shall be based on multiplication factor of 1.86, i.e., Basic Pension + Dearness Allowance [wherever applicable] + Dearness Relief of 24% as on 01.01.2006 [instead of 1.74].

6. The Learned Counsel for the Petitioners proceeds to point out that an Office Memorandum dated 30.08.2008 [Annexure I] was issued by the Ministry of Finance [Department of Expenditure] for fixation of pay of the serving employees as on 01.01.2006 and indeed, the Annexure I to the said Office Memorandum provides for Fitment Tables, among other things, providing for revised basic pay of the employees in service as on 01.01.2006. In fact, the detailed fixation tables for each stage in each of the pre-revised scales were worked over in the manner recommended by the Sixth Pay Commission and this may be utilised for the purpose of fixation in the

revised pay structure as on 01.01.2006. But these 'Tables' are not to be used for calculation of pension Pre 2006 'Retirees', who were Government servants before 01.01.2006.

7. It is represented on behalf of the Petitioners that after Resolution on 29.08.2008, Office Memorandum F.No.38/37/08-P&PW(A) dated 01.09.2008 [Annexure II] was issued by the Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, which provides Inter alia, for revision of Pension of Pre-2006, pensioners / family pensioners etc., consequent to implementation of Government decision on the recommendation of Sixth Pay Commission. In this connection, the Learned Counsel for the Petitioners takes a plea that in accordance with the Department of Pension & PW's Office Memorandum dated 01.09.2008 for revision of pension of the pre-2006 pensioners, the Pension / Family Pension of existing pre-2006 pensioners / family pensioners will be consolidated with effect from 01.01.2006 by adding together (a) the Existing Pension / Family Pension (b) Dearness Pension, which were applicable (c) Dearness relief upto AICPI (IW) average index 536 (Base Year 1982=100) i.e., @ 24% of Basis Pension / Basis Family Pension plus Dearness Pension as admissible and (iv) Fitment weightage @ 40% of the existing pension / family pension.

8. The Learned Counsel for the Petitioners brings it to the notice of this Court that Paragraph No. 4.2 of the Office Memorandum dated 01.09.2008 provided 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 the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In respect of HAG and above scales, according to the Petitioners, this will be 50% of minimum of the revised pay scale.

9. The Learned Counsel for the Petitioners refers to clarificatory Memorandum dated 01.09.2008 [issued in respect of other clarifications and clarification of paragraph 4.2 of Office Memorandum dated 01.09.2008] and the same runs as follows:

'The pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding

to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37,400-67,000 and the corresponding grade pay being Rs.10,000/- p.m., his minimum guaranteed pension would be 50% of Rs.37,400 + Rs.10,000/- p.m., his minimum guaranteed pension would be 50% of Rs.37,400+ Rs.10,000 (i.e., Rs.23,700/-). A statement indicating the minimum pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure.'

10. The Learned Counsel for the Petitioners points out that in accordance with the Sixth Pay Commission, the 2nd Respondent's pension was determined at Rs.33,500/- but, the Scale of Pay of Chief Commissioners' were upgraded from HAG Scale to HAG + Scale with effect from 23.05.2013, pursuant to the cadre restructuring that took place in the Income Tax Department. It is the contention of the Petitioners that when the cadre restructuring took place, the 2nd Respondent was not in service so as to carry the higher responsibility attached to the post, since he retired four years before 'Cadre Structuring' and as such, the claim of the 2nd Respondent / Applicant before the 1st Respondent / Tribunal is an untenable one.

11. The Learned Counsel for the Petitioners projects an argument that the 1st Respondent / Tribunal had failed to appreciate that the 2nd Respondent voluntarily retired on 12.04.1999 and at the time of issuance of office memorandum and made an applicable, he was not physically available in the department.

12. The Learned Counsel for the Petitioners submits that the 2nd Respondent's pension was fixed at Rs.24,700/- with effect from 01.01.2006 [vide recommendation of Sixth Pay Commission] and pursuant to the numerous orders passed by the Tribunal, which went up to Hon'ble Apex Court, a new pay scale of Rs.67,000/- - Rs.79,000/- corresponding to old pay scale of Rs.22,400/- - Rs.24,500/- was notified with effect from 01.01.2006. Consequently, the basic pension drawn by the 2nd Respondent was revised from Rs.24,700/- to Rs.33,500/- with effect from 01.1.2006.

13. The Learned Counsel for the Petitioners submits that the Ahmedabad Bench of the Tribunal in O.A.183 of 2013 had rejected the claim of the 2nd Respondent for

allowing the pension in regard to the upgraded pay scale and the said order was affirmed by the Gujarat High Court, as such, the request for grant of pension at 50% of the minimum of HAG plus Scale is not legally permissible, which aspect was not taken note of by the 1st Respondent while passing orders in the original application filed by the 2nd Respondent.

14. The Learned Counsel for the Petitioners takes a stand that several petitions were filed by the Pre-2006 pensioners before the Central Administrative Tribunal and High Courts and in these Petitions, apart from seeking parity between Pre and Post 01.01.2006 pensioners, the clarification in the Office Memorandum dated 03.10.2008 was assigned claiming that under the Resolution of Department of Pension & PW dated 29.08.2008 and Official Memorandum 01.09.2008, pre-2006 pensioners, are entitled to a minimum guaranteed pension at 50% of the minimum of pay band, as arrived at with reference to the Fitment Tables for revision of pay of the serving employees plus the grade pay thereon and not at 50% of the starting point of Pay Band plus the Grade Pay. In fact, the Central Administrative Tribunal, Principal Bench, New Delhi by a common order dated 01.11.2011 had allowed the aforesaid prayer in O.A.No.655 of 2010 and three other OA's for fixation of minimum pension as per the Fitment Tables.

15. The Learned Counsel for the Petitioners contends that aggrieved against the said order in O.A.No. 655/2010 dated 01.11.2011 to the extent it directed the reckoning of 'Higher Minimum Pay' in the pay band, as per fitment table for the purpose of revision of pension, the Respondents projected Writ Petitions before the High Court of Delhi, viz., W.P.(C).No.1535/2012, W.P.(C) Nos.2348 of 2012, 2349 and 2350/2012 and when the said Writ Petitions were pending, an Office Memorandum dated 28.01.2013 was issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare containing the decision to further step up the pension of pre-2006 pensioners with reference to the fitment table annexed to the Office Memorandum dated 30.08.2008 and the aforesaid Office Memorandum dated 28.01.2013 was issued pursuant to the cabinet decision and the decision of the cabinet was to be implemented from the prospective date (24.09.2012.)

16. The Learned Counsel for the Petitioners submits that as per Common Order dated 29.04.2013, the W.P.(C).

No.1535/2012, W.P.(C)Nos.2348 of 2012, 2349 and 2350/2012 were dismissed, thereby upholding the decision of the Tribunal dated 01.11.2011, which was assailed before it. In this regard, the Learned Counsel for the Petitioners points out that S.L.P.(C) No.23055 of 2013 was filed against the order passed by High Court of Delhi dated 29.04.2013 in W.P.(Civil) No.1535 of 2012 and that the Special Leave Petition was dismissed on 29.07.2013. Besides that, separate Special Leave Petitions were filed against the order in W.P.(C) Nos.2348-50/2012 dated 29.04.2013 passed by the High Court of Delhi.

17. The Learned Counsel for the Petitioners comes out with a plea that Review Petition (C) No.2492/2013 and a Curative Petition No.126/2014 in S.L.P.No.23055/2013 were filed before the Hon'ble Apex Court, which was dismissed on 12.11.2013 and 30.04.2014. After the dismissal of the Curative Petition filed in respect of O.A.No.0655/2010 and S.L.P.No.23055/2013, the order dated 01.11.2011 of the Central Administrative Tribunal [Principal Bench] was implemented in respect of the Petitioners in O.A.No.655 of 2010. Further, on 17.03.2015 the Special Leave Petitions were dismissed by the Hon'ble Supreme Court and an Office Memorandum dated 30.07.2015 was issued in implementing the orders of the High Court and Hon'ble Supreme Court.

18. The Learned Counsel for the Petitioners submits that in O.A.No.183 / 2013, the Central Administrative Tribunal, Ahmedabad Bench on 13.07.2015 passed an order in regard to the issue allowing the revised pension with reference to the minimum of the upgraded pay scale instead of the minimum of the corresponding pay scale in the case of Kunjvihari Rameshchandra Dixit [Retired Member of the Income Tax Appellate Tribunal] and the Tribunal dismissed the claim of the Petitioner by observing as under:

'The argument of the applicant, that the respondents while fixing Annexure 1 and 2 pay scales ought to have taken into account of the Annexure A16 Presidential Order by which the scale of pay of the Members in the ITAT was enhanced, seems to be too far-fetched and ambitious.'

further that, the order of the Tribunal was endorsed by the High Court of Gujarat in Special Civil Appeal No.1746/2015 between Bank of India V. Kunjvihari Rameshchandra Dixit.

19. The Learned Counsel for the Petitioners draws the attention of this Court to the order dated 15.02.2016 in O.A.No.2553 of 2014 of the Central Administrative Tribunal [Principal Bench] wherein it is observed as under:

"As discussed in paragraphs 6.1, 6.1, 6.1.2 and 6.1.3 of this order, the Full Bench of the Tribunal, in Central Government SAG (S-29) pensioners Association through its Secretary V. Union of India and another (supra), dealt with the question of revision of pension of pensioners who had retired from service in the 5th CPC pay scale (Scale 29) of Rs.18,400-500-224001- which was revised to Pay Band of Rs.37,400-67,001- with Grade Pay of Rs.10,0001-. The question of revision of pension of pensioners, who had retired from service in the 4th CPC pay scale of Rs.7300-7600/- corresponding to 5th CPC pay scale of Rs.22,400- 24,5001 -= OA 2553-14 24 Rajendra V. PAO & amp. Ors page 24 of 32 and 6th CPC HAG pay scale of Rs.67000-79001-, was neither raised nor decided by the Full Bench of the Tribunal. The question of admissibility of the benefit of upgradation of posts subsequent to their retirement was also neither raised nor decided by the Full Bench of the Tribunal. Allowing the O.A.s, the Full Bench of the Tribunal, in paragraph 30 of the order, quashed the O.Ms. Dated 03.10.2008 and 14.10.2008 (which was also based on O.M. Dated 03.10.2008) and O.M. Dated 11.02.2009, whereby representation was rejected by common order'. The Tribunal further directed the respondents to re-fix the pension of all pre-2006 retirees w.e.f. 01.01.2006, based on the resolution dated 29.08.2008, *ibid*.9.1. It is pertinent to mention here that by the O.M.dated 11.02.2009, which was quashed by the Full Bench of the Tribunal, the Government of India, Ministry of Personnel Public Grievances and Pension, Department of Pension & Amp; Pensioners' Welfare, disposed of several representations regarding revision of pension of pre-2006 pensioners. By the O.M. Dated 11.02.2009, *ibid*, the Department of Pension & Pensioners' Welfare reiterated its decision for fixation of pension 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, and clarified that the 'the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard'. OA 2553-14 25 Rajendra V. PAO & Ors page 25 of 32 9.1.1 Though the Full Bench of the Tribunal quashed the O.M. Dated 11.02.2009, *ibid*, the decision of the Full Bench was qua the applicants before it, and was not with regard to quashing of the decision of the Government regarding the admissibility of the benefit of upgradation of posts, subsequent to their retirement, to the pre-2006 pensioners. In the concluding paragraph 30 of the order, the Full Bench did not direct the respondents to grant the benefit of up gradation of posts (subsequent to their retirement) to the pre-2006 pensioners, while revising their pension with effect from 01.01.2006. Therefore, the decision of the Full Bench in Central Government SAG (S-29) pensioners Association through its Secretary V. Union of India and another (*Supra*) is not all relevant in the case of the applicant and other similarly placed pensioners'.

20. The Learned Counsel for the Petitioners refers to the Orders passed in W.P.No.7821 of 2012 passed by the High Court of Delhi in the case of Amrendra Nath Mishra wherein it was mentioned that issue of upgradation of post was not covered by the decision of the Full Bench of the Tribunal in O.A.No.655/2010 and accordingly remanded back the matter to the Tribunal, [Principal Bench]

21. In sum and substance, the argument of the Petitioners is that Pre-2006 pensioners are entitled to revised pension with reference to the minimum of revised corresponding pay scale and not with reference to the upgraded pay scale. Therefore, they pray for allowing the Petition by setting aside the Impugned Order dated 21.04.2016 passed in OA/310/00095/2015 by the 1st Respondent / Tribunal.

22. Conversely, it is the submission of the Learned Counsel for the 2nd Respondent that the Petitioners had admitted that the 2nd Respondent was the controlling authority at the time of his retirement, as Chief

Commissioner of Income Tax and after 'Cadre Restructuring' with effect from 23.05.2013, the Principal Chief Commissioner of Income Tax became the Cadre Controlling Authority, whereas, the post of Chief Commissioner of Income Tax held by the 2nd Respondent was diluted, as such, the averment that higher duties and responsibilities were attached to the post of Chief Commissioner of Income Tax with effect from 23.05.2013 is not correct.

23. The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that prior to 23.05.2013, the Central Board of Direct Taxes was the only authority above the Chief Commissioner of Income Tax. However, with effect from 23.05.2013, the aforesaid Chief Commissioners are Principal Chief Commissioners, thereafter, the Central Board of Direct Taxes.

24. The Learned Counsel for the 2nd Respondent points out that the 2nd Respondent belongs to Grade S-30 and the last line in Office Memorandum No.38/37-08 P and PW (A) dated 01.09.2008 reads 'In the case of HAG and above scales, this will be 50% of the minimum of revised pay scale' is a relevant thing and further that, the plea of the Petitioners that the 2nd Respondent was not in service at the time of 'Cadre Restructuring' to shoulder the higher responsibilities attached to that post and he had retired before four years before reconstructing, is an untenable one.

25. The Learned Counsel for the 2nd Respondent emphatically takes a plea that the effect of reconstructing is that post of 'Chief Commissioner of Income Tax' was no longer the cadre controlling authority, but made a post subordinate to the Principal Chief Commissioner of Income Tax, which was only created and notified as Cadre Controlling Authority.

26. The Learned Counsel for the 2nd Respondent points out that the reconstructing order dated 19.07.2013 read with Office Memorandum dated 23.7.2013 in respect of fixation of pay of Chief Commissioners is concerned, it would only show that there was downgrading of the post of Chief Commissioner, but with upward revision of pay attached to the said post and this was confirmed by Section 116 of Income Tax Act (Amended with effect from 01.06.2013).

27. The Learned Counsel for the 2nd Respondent submits that further Office Memorandum dated 23.07.2013 clearly mentions that the post of Chief Commissioner of Income Tax was upgraded from HAG Scale to HAG plus Scale with effect from 23.05.2013 and that the pay of the officers holding the post of Chief Commissioner of Income Tax shall be regulated in terms of Fundamental Rule 23 and as a matter of fact, Fundamental Rule 23 speaks of how the pay of the holder of the post is to be determined when the pay of that post is changed.

28. The Learned Counsel for the 2nd Respondent points out that the present case is a case of 'Mere Revision of Pay Scale', which was omitted to be considered by the Petitioners. Further, it is projected on the side of the 2nd Respondent that there is no condition that a retired Chief Commissioner of Income Tax ought to have been in service when the pay scale was introduced and he should have drawn pay in that scale for entitlement of pension based on the new revised pay scale for that post. Furthermore, if that were the case, Paragraph 4.2 of the Office Memorandum dated 01.09.2008 would not have been issued at all and the 2nd Respondent, who retired before 01.01.2006 would not have been showed the benefit of pension fixation with reference to Pay scale of Rs.67,000 - Rs. 79,000 with effect from 01.01.2006.

29. The Learned Counsel for the 2nd Respondent submits that in O.A.No.1586 of 2010, the Principal Bench of the Central Administrative Tribunal allowed the claim for Revision of Pension of retired members of Central Board of Direct Taxes, on upgradation of pay scale of members from 75,500 - Rs.80,000/- to the Apex Scale of Rs.80,000/- after their retirement. In reality, that was the case of upgradation of post because the 'Ex-officio' status of the Member improved and further the reliance on the clarification dated 11.02.2009 was negatived. That apart, the 2nd Respondent, in the present case, was in continuous service in the Central Government from 29.06.1964 to 12.04.1999 on which date, he left the Income Tax Department to join Central Administrative Tribunal.

30. The Learned Counsel for the 2nd Respondent strenuously takes a plea that the Hon'ble Supreme Court cases referred to by the Petitioners in the Writ Petition are based on particular State Government Service Rules that were in force from time to time and they revolve on the question of retroactive operation of orders to merge

allowances with pay for computation of pension and they are inapplicable to the facts of the 2nd Respondent's case in regard to the application of Office Memorandum dated 23.07.2013 of Central Board of Direct Taxes read with Paragraph 4.2 of the Official Memorandum dated 01.09.2008. Also that the Office Memorandum dated 11.05.2001 is not applicable to the facts and circumstances of the 2nd Respondent's case and in fact, the Office Memorandum dated 01.09.2008 is the correct applicable to all pre 2006 pensioners after Sixth Central Pay Commission.

31. The Learned Counsel for the 2nd Respondent contends that the question of upgradation of post is not covered by the decision in O.A. 655/2010 of the Principal Bench of the Tribunal and further in the instant case, the 2nd Respondent's contention is that there was no upgradation of all the posts of Chief Commissioners by means of Sanction Order dated 19.07.2013 and Office Memorandum dated 23.07.2013. Furthermore, the upgradation of post confines to 26 posts, which were upgraded to Principal Chief Commissioners Income tax and the upgradation in remaining 90 posts was not upgradation of pay scale only and Rule 23 of Fundamental Rules (General Rules) were made applicable and that the 2nd Respondent is not claiming pension with reference to the pay scale to the post of Principal Chief Commissioner but only pleading to the grant of pension with reference to the revised pay scale of Chief Commissioner.

32. The Learned Counsel for the 2nd Respondent vehemently contends that the word 'Upgradation' in regard to the pay scale means only upward revision and further that, the pay scales do not exist and operate in a vacuum without any reference to the posts. Also that, the persons are appointed to posts carrying a certain scale of pay and that the corresponding pay scale is basically aligned with the post.

33. At this stage, the 2nd Respondent comes out with a plea that before the issuance of Sanction Order dated 19.07.2013 and the Office Memorandum dated 23.07.2013, the post of Chief Commissioner carried the pay scale of Rs.67,000/- - Rs.79,000/- and after the issuance of those orders, the post carried the pay scale of Rs.75,500/- - Rs.80,000/- and when the 2nd Respondent, who retired from the post of Chief Commissioner of Income tax and put in cadre controlling authority is entitled to the pension at

the rate of 50% of minimum pay Scale of Rs.75,500 - Rs.80,000/- if not with reference to the pay of the Principal Chief Commissioner of Income Tax.

34. The Learned Counsel for the 2nd Respondent refers to the Patna High Court Order dated 18.05.2015 in CWJC 10757 of 2010, Review Order dated 24.09.2015 in OA 937/2010 of FB of CAT PB to the effect that those who retired from post carrying pay scale of Rs.22,400/- to Rs.24,500/- prior to 01.01.2006 are entitled to minimum basic pension of Rs.38,500/- per month from 01.01.2006. Further, as against this, the 2nd Respondent, who retired after drawing new pay scale for three years prayed for grant of pension of Rs.37,750/- per month, which was allowed by the Central Administrative Tribunal and the same is assailed in the present Writ Petition. Apart from that, the Kerala High Court in OP [CAT] No. 169 of 2015 (Z) dated 18.01.2016 had clearly observed that the pension is to be fixed on the upgraded pay scale and not with reference to pre-revised scale, from which the Petitioner retired.

35. Be it noted that in OP [CAT] No.169 of 2015 (Z) between Pay and Accounts Officer (Revenue) RFA Barracks, Church Road, Hutments New Delhi and Three Others V. N.R. Purushothaman Pillai, Enforcement Officer [Retired] Madhavam, Kuzhivila Lane, Pappanamcode, Tiruvananthapuram- 18, the High Court of Kerala on 18.01.2016 at Paragraph No.7 had among other things observed as under:

" The resultant position that emerges from the pronouncement of the Central Administrative Tribunal as well as the different High Courts and the Apex Court is that, computation of pension in the matter of implementation of the 6th Pay Commission Report has to be at 50% of the pay scale with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay to the one at which the incumbent has retired. On the basis of the above dicta, consequential orders have been passed and payments have also been made in implementation thereof. It is therefore held that, the issue remains settled by the various decisions referred to above which are binding on the petitioners.....'

36. It is seen from the order dated 28.04.2017 in between R.D. Sharma V. Union of India [W.P.No.14940 of 2013] the High Court of Madhayapradesh had interalia is under :

'....When the pay scale was fixed by upgradation of one post and the petitioner was working on the post at the time of retirement after fixation of pay scale of Rs.80,000/- in accordance with Rules of 8008, as quoted above, the petitioner is also eligible to get the benefit of pension and fixation of pension accordingly...'

37. Furthermore, in the Delhi High Court Order dated 03.08.2016 in W.P.(C) No.3035 of 2016 between Ram Phal V. Union of India and others at Paragraph No. 24 as observed as under :

'24. It apparent that the respondents have not applied their mind while fixing the pension of the petitioner at Rs.8701/- per month and it seems that the respondents have placed reliance upon the Office Memorandum dated February 11,2009 and have placed the petitioner in the pay band S-12 but has not taken into consideration the subsequent upgradation of the post of Subedar Major which would plae the pettioner in pay band S-14, and needless to state the pension would also have to be revised accordingly.

25. We would also note that reliance placed on the Office Memorandum dated February 11,2009 itself is misguided for the reason that Central Government SAG case was as appeal against the order of Central Administrative Tribunal dated November 01,2011 wherein the Tribunal had set aside the Memorandum dated February 11,2009. The decision rendered by the Division Bench of this Court was also challenged before the Supreme Court but the same attained finality and quietus when the curative petition was dismissed on April 30,2014. Needless to state the order dated February 10, 2016 having been passed subsequently, the respondents were duty bound to consider the case of the petitioner de hors the Memorandum dated February 11, 2009 and had the same been done, undoubtedly the petitioner would stand entitled to pension in sum of Rs.9,375/-

per month as has been claimed by him.

26. We would also note that the present petition would also need to be allowed in the teeth of the recent Office Memorandum dated April 06, 2016 wherein it has been unambiguously stated that 'It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement.' On the same reasoning, the petitioner cannot be denied the benefit of revised pension when the respondents themselves have adopted the aforementioned position.'

and ultimately allowed the petition by quashing the order dated 10.2.2016 and Office Memorandum dated 11.02.2009 to the extent that it stated that the benefit of upgradation of post subsequent to the retirement would not be admissible to the pre-2006 pensioners and a Mandamus was issued to the Respondents therein directing to fix the pension of the Petitioner in sum of Rs.9,375/- per month as given in the fitment table appended to the Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Pensioners Welfare Office Memorandum F.No.38/40/12-P&PW(A) dated 28.01.2013 with effect from 01.01.2006. Further, the arrears of pension, as would be refixed by the Respondents therein and the same was entitled to be received by the Petitioner etc.,

38. Be that as it may, in view of the detailed enunciation as stated supra, also this Court keeping in mind that in the instant case, after the Sixth Pay Commission, i.e., 01.01.2006, the Scale of Pay attached to the post of 'Chief Commissioner of Income Tax' was upgraded from HAG of Rs.67,000-29,000/- to HAG + Scale of Rs.75,500 - Rs.80,000/- with effect from 23.05.2013. Also that, it is pellucidly clear that the Scale of pay, which applies to the Chief Commissioner of Income Tax is altogether different and higher than the HAG Scale.

39. Suffice it for this Court to point out that the Pre-2006 Retiree is entitled to receive 50% of the minimum of pay in the revised pay Band + Grade Pay of the post from which he retired and in short, there can be no

discrimination between Pre-Retiree Persons and Post Retiree Persons on 01.01.2006 in fixation between Preretired persons and post Retiree persons on 01.01.2006, especially in the matter of pension, in the considered opinion of this Court. Viewed in that perspective, the claim of the 2nd Respondent for refixation of his pension resting on the scale of HAG 75,500/- - 80,000/- is perfectly just and legally valid with effect from 23.05.2013, therefore, the view taken by the 1st Respondent in OA/310/00095/2015 by directing the Respondents therein [Writ Petitioners] to pay the grade pay and pay the arrears etc., is free from any legal flaw. Consequently, the Writ Petition fails.

In fine, Writ Petition is dismissed leaving the parties to bear their own costs and connected Miscellaneous Petition is closed. Resultantly, the Order in OA/10/00095/2015 dated 21.04.2016 passed by the 1st Respondent is affirmed by this Court for the reasons assigned in this Petition.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Registrar, Central Administrative Tribunal,
Chennai Bench,
High Court Building,
City Civil Court Complex, Chennai

2. The Secretary,
Union of India,
Department of Pension and Pensioner's
Welfare, Ministry of Personnel, Public Grievances and
Pensions, 3rd Floor, Lok Nayak Bhavan Khan Market,
New Delhi - 110 001

3. The Secretary
Department of Personnel and Training
Government of India, New Delhi - 110 001

4. The Director (PP)
Department of Pension and Pensioner's Welfare
Ministry of Personnel, Public Grievances and Pensions,
Lok Nayak Bhavan, New Delhi - 110 001

5. The Deputy Secretary (H.Qrs)
Central Board of Direct Taxes (Income Tax)
Department of Revenue, Ministry of Finance,
Room No.255, North Block, New Delhi - 110 001

6. The Senior Accounts Officer (Pensions)
O/o the Deputy Controller of Accounts (CBDT)
Zonal Accounts Office, New Block (Ground Floor)
Aayakar Bhavan, 121, Nungambakkam,
Chennai - 600 034

+1cc to Mr.V.Vijay Shankar , Advocate SR.No. 12118
+1cc to Mr.M.Menon Karthik , Advocate SR.No. 12051

W.P.No.7909 of 2017 and
W.M.P.No.8654 of 2017

A.SK(21/02/2019)



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