

**THE HIGH COURT FOR THE STATE OF TELANGANA**

**\* THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
THE HON'BLE SRI JUSTICE P. KESHA VA RAO**

**+ WRIT PETITION No.32576 of 2018**

**% Date:15.04.2019**

Between:

# The Union of India represented by  
The Commissioner of Customs, Central Excise &  
Service Tax, Basheerbagh, Hyderabad and others

... Petitioners

v.

Mohammad Yakoob S/o.Late Mohammad Haneef,  
Retd. Deputy Office Superintendent, Central Excise,  
Tappachabutra, Kulsumpura Post, Hyderabad and others.

... Respondents

! For Petitioners : Sri Swaroop Oorilla for  
Sri MVJK Kumar

^ For Respondents : Sri E. Krishna Swamy for  
Sri Pavon Murthy

< Gist :

> Head Note :

? Cases Referred :

1. 2013 SCC On Line CAT 4518
2. 2012 SCC On Line P&H 17724
3. 2016 (232) DLT 339
4. 2015 SCC On Line P & H 2385
5. 2008 (9) SCC 125

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**AND**

**THE HON'BLE SRI JUSTICE P. KESHA VA RAO**

**WRIT PETITION No.32576 of 2018**

**ORDER:** *(Per V. Ramasubramanian, J)*

The Union of India has come up with the above writ petition, challenging an order passed by the Central Administrative Tribunal in an application filed by the 1<sup>st</sup> respondent herein.

2. We have heard Mr. Swaroop Oorilla, learned standing counsel for the Union of India and Mr. E. Krishna Swamy, learned counsel appearing for the 1<sup>st</sup> respondent.

3. The 1<sup>st</sup> respondent herein retired as Deputy Office Superintendent (DOS), Level-II, Central Excise, on 31.12.1991 in the scale of pay of Rs.1400-40-1000-50-2300-60-2600 (as per the Fourth Central Pay Commission).

4. Contending (i) that the scales of pay of the posts of Deputy Office Superintendent, Level-I and Level-II were merged on 20.09.2005 under the Fifth Central Pay Commission and placed in the scale of pay of Rs.5500-9000; (ii) that the merged post was identified with Pay Band-2, namely, Rs.9300-34800 with grade pay of Rs.4200 under the Sixth Central Pay Commission; (iii) that after the VI CPC, the minimum pay of the merged post became Rs.14,430/- with effect from 01.01.2006; (iv) and that as a consequence, he became eligible to receive a minimum pension of Rs.7,215/- (50% of Rs.14,430/-), the 1<sup>st</sup> respondent filed an application in O.A. No.021/01268/2015 on the file

of the Central Administrative Tribunal, Hyderabad. It should be noted here that the 1<sup>st</sup> respondent was being paid a pension of Rs.6,750/-. What he prayed before the Central Administrative Tribunal was the fixation of his Pension at Rs.7,215/- per month, with effect from 01.01.2006.

5. By an order dated 07.12.2017, the Central Administrative Tribunal allowed the application of the 1<sup>st</sup> respondent herein, on the basis of a judgment of a Coordinate Bench of the Tribunal at Ernakulam, in O.A. Nos.715 and 1051 of 2012. The Tribunal found that the decision of the Coordinate Bench of the Tribunal at Ernakulam in the case of **M.O. Inasu v. Union of India**<sup>1</sup> was identical to the case of the 1<sup>st</sup> respondent and that the judgment of the Ernakulam Bench of the Tribunal was also confirmed on an appeal by the High Court of Kerala. The Special Leave Petitions and the Review Petitions filed by the Union of India as against the decision of the Kerala High court, were also dismissed, and hence, the Tribunal allowed the application filed by the 1<sup>st</sup> respondent. The Tribunal also took note of a decision of the High Court of Punjab and Haryana in **Agia Ram v. Union of India**<sup>2</sup> and the judgment of the Delhi High Court in **Ram Phal v. Union of India**<sup>3</sup> to come to the conclusion that the benefit of upgradation of posts was available even after retirement of the pre-2016 pensioners. Aggrieved by the order of the Central Administrative Tribunal, the Union of India is before us.

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<sup>1</sup> 2013 SCC On Line CAT 4518

<sup>2</sup> 2012 SCC On Line P&H 17724

<sup>3</sup> 2016 (232) DLT 339

6. This Court had an occasion to consider a similar claim by persons who retired from the post of Superintendent of Central Excise, in W.P. Nos.9770, 9779 and 9844 of 2017. These writ petitions arose out of a common order passed by the Central Administrative Tribunal, Hyderabad Bench in three different applications. By a judgment dated 05.12.2017, this Court allowed the writ petitions and set aside the judgment of the Central Administrative Tribunal, after considering in great detail the core issue as to whether the revised pension is to be calculated with reference to the minimum of the revised corresponding pay scales or with reference to the upgraded pay scales. Therefore, the present writ petition also deserves to be allowed on the same basis.

7. However, Mr. E. Krishna Swamy, learned counsel for the 1<sup>st</sup> respondent contended that when two different posts are merged while implementing the recommendations of the Central Pay Commission, persons who retired from one of the two merged posts would be entitled to seek fixation of pension on the basis of the revised scale of pay of the merged posts and that this issue has already been settled by the Supreme Court in **K.S. Krishna Swamy v. Union of India** (Civil Appeal No.3174 of 2006 dated 23.11.2006), as well as by a judgment of Punjab and Haryana High Court in **Union of India v. Darshan Lal Bali**<sup>4</sup>, dated 29.01.2015. The learned counsel for the 1<sup>st</sup> respondent also relied upon the judgment of the Supreme Court dismissing the Special Leave Petitions and the Review Petitions arising out of the

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<sup>4</sup> 2015 SCC On Line P & H 2385

Judgment of Kerala High Court confirming the order of the Ernakulam Bench of the Central Administrative Tribunal. Therefore, in effect, the contention of the learned counsel for the 1<sup>st</sup> respondent is that the judgment of the Tribunal does not call for any interference.

8. We have carefully considered the above contentions.

9. For a better understanding of the issues raised in the writ petition, it may be necessary to bring on record a few facts, which are as follows:

i) The 1<sup>st</sup> respondent retired on 31.12.1991 on superannuation in the post of Deputy Office Superintendent, Level-II. On the date of retirement, he was drawing pay in the scale of pay of Rs.1400-2600 fixed under the 4<sup>th</sup> Central Pay Commission.

ii) Under the Fifth Central Pay Commission, the pay scale of the post of Deputy Office Superintendent, Level-II was revised to Rs.5000-150-8000. The scale of pay of the post of Deputy Office Superintendent, Level-I was revised to Rs.5500-175-9000 under the Fifth Central Pay Commission with effect from 01.01.1996.

iii) With effect from 20.09.2005, the posts of Deputy Office Superintendent, Level-I and Deputy Office Superintendent, Level-II were merged into one and the same category and the merged cadre was given the scale of pay of Rs.5500-175-9000.

iv) Under the Sixth Central Pay Commission, the scale of the post of Deputy Office Superintendent (merged cadre) was identified with Pay Band-2, namely, Rs.9300-34800 with grade pay of Rs.4200 with effect from 01.01.2006.

v) It was decided by the Union of India, Department of Pensions and Pensioners Welfare, by an office Memorandum bearing OM No.38/37/08, dated 01.09.2008 that the pension of pre-2006 pensioners will not be less than 50% of the minimum pay in the Pay Band plus Grade Pay, corresponding to the pre-revised scale of pay from which the petitioner retired. A clarification to this Office Memorandum was also issued by another Office Memorandum dated 28.01.2013.

vi) The only clarification that was issued under this Office Memorandum dated 28.01.2013 was that the pension of pre 2006 pensioners would be stepped-up to 50% of the sum of the minimum of pay in the Pay Band and Grade Pay corresponding to the pre revised scale from which the pensioner retired, as arrived at with reference to the fitment tables annexed to the Office Memorandum dated 30.08.2008.

10. The claim of the 1<sup>st</sup> respondent before the Central Administrative Tribunal was that though he retired in the post of Deputy Office Superintendent, Level – II on 31.12.1991, the said post got merged with the post of Deputy Office Superintendent, Level-I on 20.09.2005 and with effect from the said date, the post of Deputy Office Superintendent became one single post with one scale of pay.

Therefore, the contention of the 1<sup>st</sup> respondent before the Tribunal was that the benefit of merger that happened after 14 years of his retirement should be given to him and his pension fixed in the revised scale under the Sixth Central Pay Commission with reference to the revised scale of pay of the merged cadre.

11. Therefore, in simple terms, the issue arising for consideration before us is as to whether a person who retired from a particular category of post carrying a particular scale of pay will be entitled to pension on the basis of the revised scale of pay of the post with which the post held by him got merged after his retirement or whether his pension should be fixed on the basis of the revised pay scale corresponding to the scale of pay drawn by him at the time of retirement. The answer to this question is too obvious to be deliberated. A retired pensioner cannot seek the benefit of merger that takes place after his retirement. In this case, the 1<sup>st</sup> respondent retired from the post of Deputy Office Superintendent Level-II on 31.12.1991 in the scale of pay of Rs.1400-2600. On the date of his retirement, the post of Deputy Office Superintendent, Level-I carrying a scale of pay of Rs.1640-2900 was in existence. These two posts were merged on 20.09.2005, 14 years after the retirement of the 1<sup>st</sup> respondent. During this period of 14 years, one pay revision had already taken place under the Fifth Central Pay commission with effect from 01.01.1996. On the recommendations of the Fifth Central Pay commission, the scale of pay of the post of Deputy Office Superintendent, Level-I was revised from Rs.1640-2900 to Rs.5500-

9000. Similarly, the scale of pay of the post of Deputy Office Superintendent, Level-II was revised under the Fifth Central Pay Commission with effect from 01.01.1996 from Rs.1400-2600 to Rs.5000-8000.

12. Therefore, the merger that took place on 20.09.2005 will not confer a right upon persons like the first respondent to have their pay notionally stepped up to that of the merged cadre, so as to enable them to have their pension fixed on that basis.

13. A simple illustration would demonstrate the fallacy of the claim of the 1<sup>st</sup> respondent. Let us take a hypothetical case where the post held by a retired pensioner gets abolished after some time. His right to receive pension does not get abolished with the abolition of the post. This is for the reason that pension is always correlated to the last pay drawn, in a particular scale of pay that gets revised from time to time. This is why pension is always fixed with reference to the scale of pay of the post held by the retired pensioner. It is not fixed with reference to the post held by him.

14. If the pension of a retired pensioner is fixed with reference to whatever happens to the post last held by him, he will be in the danger of losing his pension, if the post gets abolished. His right to continue to draw pension even if a post gets abolished, is on account of the fact that the pension is correlated always to the scale of pay of the post held by him. It is this distinction that has been lost sight of by the Central Administrative Tribunal while allowing the application of the first respondent.

15. The transition that took place in the scales of pay of the posts of Deputy Office Superintendent, Level-I and Level-II are indicated in a tabular statement in Paragraph-10 of the affidavit in support of the writ petition. This tabular statement is as follows:

| Cadre       | Pay scale<br>w.e.f.1.1.1986              | Post/Grade<br>And pay scale<br>w.e.f.1.1.1996 |                       | Name<br>of Pay<br>Band/<br>scale | Correspond-<br>ing 6 <sup>th</sup> CPC<br>pay Bands/<br>scale | Correspond-<br>ing Grade<br>pay | Sum of<br>minimum<br>Pay in the<br>Pay Bank<br>and Grade<br>Pay/Minimu<br>m Pay in the<br>Scale as per<br>fitment<br>table | Pension=50%<br>of Sum of<br>minimum Pay<br>in the Pay<br>bank and<br>Grade Pay/<br>Minimum Pay<br>in the Scale as<br>per fitment<br>table |
|-------------|------------------------------------------|-----------------------------------------------|-----------------------|----------------------------------|---------------------------------------------------------------|---------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 1           | 2                                        | 3                                             | 4                     | 5                                | 6                                                             | 7                               | 8                                                                                                                          | 9                                                                                                                                         |
| DOS<br>L-II | 1400-40-<br>1600-50-<br>2300-60-<br>2600 | S-9                                           | 5000-<br>150-<br>8000 | PB-2                             | 9300-34800                                                    | 4200                            | 13500                                                                                                                      | 6750                                                                                                                                      |
| DOS<br>L-I  | 1640-60-<br>2600-75-<br>2900             | S-10                                          | 5500-<br>175-<br>9000 | PB-2                             | 9300-34800                                                    | 4200                            | 14430                                                                                                                      | 7215                                                                                                                                      |

16. Fundamentally, a retired pensioner cannot seek the benefit of merger of posts that happens in between two revisions. The recommendations of the Fifth Central Pay Commission were implemented with effect from 01.01.1996 and the recommendations of the Sixth Central Pay Commission were implemented with effect from 01.01.2006. The benefit of merger granted in between on 20.09.2005 was available only to serving employees.

17. It is interesting to see from the office order issued by the Government of India, Ministry of Finance, Department of Revenue in F.No.A.11013/16/2002-Ad.IV, dated 20.09.2005 that while ordering the merger of the cadres of Deputy Office Superintendent, Level-II and Deputy Office Superintendent, Level-I, the Government actually abolished 233 posts of Deputy Office Superintendent, Level-II. The relevant portion of the office order dated 20.09.2005 under which the merger took place, reads as follows:

- (i) The merged cadres of DOS Level-II and DOS Level-I will be known as Deputy Office Superintendent (DOS);
- (ii) The sanctioned strength of the cadre of DOS for entire CBEC shall be 1751;
- (iii) Pay scale of the merged cadre of DOS shall be Rs.5500-9000/-;
- (iv) Senior Tax Assistant will be feeder cadre for both DOS and Inspectors; and
- (v) As a result of the proposed merger 233 posts in the existing grade of DOS Level-II in various field formations under CBEC (as per the annexure) are abolished with the immediate effect.”

18. Therefore, it will be dangerous even for the retired pensioners to correlate their pension with the post, as posts may be created as well as abolished at the will of the Government. This is why the fundamental premise on which pension is fixed is to correlate the same to the scale of pay drawn at the time of retirement and which gets revised from time to time.

19. The Office Memorandum bearing F.No.38/37/08-P and PW dated 11.02.2009 of the Government, Ministry of Personnel, Public Grievance and Pensions, Department of Pension and Pensioners Welfare also made it clear that the benefit of up-gradation of posts subsequent to the retirement of a person would not be admissible to the pre- 2006 retirees.

20. The decision of the Division Bench of the Punjab and Haryana High Court arose out of certain peculiar circumstances. There was a Railway Board Circular on the basis of which one set of individuals successfully made a claim. That came to be known as **Agia Ram** case. Following the decision in **Agia Ram**'s case, which was also implemented by the Railway Administration, the Punjab and Haryana High Court extended the benefit to the other pensioners of

the Railways. Therefore, the said decision is distinguishable. Moreover, the Railway Board circular granting up-gradation of certain posts, the benefit of which was sought by the retired pensioners, did not abolish any posts. Therefore, the case on hand stands on a different footing. Similarly, the decision of the Delhi High Court revolved around certain clarificatory Office Memorandum dated 03.10.2008 and 14.10.2008. Though the judgment proceeded on the basis of the ratio laid down in a decision of the Supreme Court in **Union of India v. SPS Vains<sup>5</sup>**, the same did not revolve around abolition of posts. The judgment of the Kerala High Court relied upon by the learned counsel for the 1<sup>st</sup> respondent is also distinguishable for the same reason.

21. Therefore, in fine we hold that when a merger of two cadres takes place after the retirement of a person and the merged cadre is granted a particular scale of pay, persons, who retired long before the merger would not automatically become entitled to the revision/fixation of pension on the basis of the merger. Pension is to be correlated only to the scale of pay drawn by the pensioner on the date of retirement, with reference to the revision granted from time to time to the said pay scale. It cannot depend upon the fluctuation in the status of the post last held by him, but depends only upon the fluctuation in the pay scale in which he was drawing pay on the date of retirement.

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<sup>5</sup> 2008 (9) SCC 125

22. Therefore, the writ petition is allowed and the impugned order is set aside.

23. Consequently, miscellaneous petitions, if any pending, shall stand closed. No order as to costs.

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**V. RAMASUBRAMANIAN, J**

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**P. KESHA VA RAO, J**

**April 15, 2019**

**Note:**

**L.R. Copy to be marked.**

**B.O.KTL**

