IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mrs. Justice V. BHAVANI SUBBAROYAN

W.P.No.15982 of 2021
and W.M.P.Nos. 16889 & 16892 of 2021

Jhanakidhevi S.K. .. Petitioner

Vs

Union of India Rep. By
1.The Sr.Accounts Officer (Pension),
Zonal Accounts Office, CBDT,
Chennai – 34.

2.The Deputy Controller of Accounts,
Zonal Accounts Office, CBDT,
Chennai – 34.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus or any other appropriate writ order or direction to call for the records of the Hon'ble Central Administrative Tribunal made in R.A.9/2019 in O.A.No. 181 of 2013 dated 17th July, 2019 and quash the same and consequently direct the respondents 1 and 2 to re-fix the pension of the petitioner at Rs.12,411/- w.e.f 01.01.2006 taking into account her basic pension as Rs.5,491/-, not inclusive of "Dearness Pension" and pay all the due arrears of pension etc., and other monetary reliefs.

For Petitioner : Ms.S.K.Jhanakidhevi
Party – in - Person

For Respondents: Mr.C.Kulanthaivel
Senior Panel Counsel
for R1 & R2

JUDGMENT

(Made by PARESH UPADHYAY, J.)

1. Challenge in this petition is made to the order passed by the Central Administrative Tribunal, Madras Bench dated 17.07.2019 rejecting the Review Application No.9 of 2019 in O.A.No.181 of 2013. The said application was for review of the order passed by the Central Administrative Tribunal, Madras Bench dated 24.10.2013 recorded on O.A.No.181 of 2013. This petition is by the applicant before the Central Administrative Tribunal - the employee. The dispute pertains to the revision of pension.

2. We have heard the petitioner - in - person. At the outset we note that, the petitioner is a very senior citizen, who had retired on attaining the age of superannuation in September, 2004. She is heard for few hours with all the procedural concessions including with regard to pleadings and an attempt was made to find out, what relief can be granted to her. We have considered her say / submissions with due sympathy.

3. We have also heard learned Senior Panel Counsel for respondents 1 and 2 (Central Government Authorities) who has defended the order(s) of the Central Administrative Tribunal.

4. The petitioner has made serious grievance with regard to her revision of pension. It is vehemently submitted that, while revising her pension w.e.f 1.1.2006, the element of Dearness Allowance is not properly considered. It is submitted that the basic pension of the petitioner was Rs.5,491/- and therefore the benefit of 40% fitment should have been calculated on that basis and not on Rs.3,661/- which the authorities have done. It is submitted that if the calculation given by the application is accepted her pension would be revised at Rs.12,411/- per month and not Rs.8,274/-. To make this point good, the petitioner has taken this Court extensively through various Office Memorandums, more particularly dated 01.03.2004 with specific reference to para : 3 thereof. She has also relied on some information from the portal etc., She had also relied on some other material / statement, which is not form in part of record which also we have permitted to find out if any relief can flow therefrom. It is her case that, the calculation given by her be accepted for the purpose of revision of her pension. We note that, the petitioner was in service of the Income Tax Department from January 1964 till September 2004. She has retired from the post of Superintendent, Income-Tax Department and she understands the effect of the Government Order, correctly and she has also put her case before this Court with absolute clear submissions. It is noted again that it is

the case of the petitioner that her pension should have been revised at the stage of Rs.12,411/- by giving 40% fitment for Rs.5,491/- and not Rs.3,661/-. This is the specific case pleaded before the Central Administrative Tribunal and this is the specific case pleaded before this Court as well. It is submitted by her that the calculation given by her be accepted as the proper revision of pension on the lines of the orders of the Government as contained in various Government Orders. It is submitted that the order of Tribunal be set aside and her application before the Tribunal be allowed.

5. On the other hand, learned Senior Panel Counsel has addressed the Court at length. It is submitted that not only the Central Administrative Tribunal has not committed any error. Independent of the satisfaction recorded by the Tribunal or what is contended in the counter filed before the Central Administrative Tribunal, it is attempted to demonstrate before this Court how the revision of pension effected by the authorities is just and proper and in accordance with law. It is submitted by him that this petition be dismissed.

6. Having heard the petitioner and the learned Senior Panel Counsel for the respondent / Central Government Authorities and having considered the material on record, so also additional material referred to by the petitioner, we find as under:-

6.1 The petitioner had joined the services on 16.01.1964 of the respondent Income-tax Department. She has retired on attaining the age of superannuation on 30.09.2004. At the time of her retirement, her basic pay was Rs.7,425/-. She was in the pay scale of Rs.5500 - 175 - 9000. At the time of her retirement, her pension was required to be calculated on that basis. Since she had put in more than 33 years of service, she was entitled to full pension, which is 50% of the pensionable pay.

6.2 Since the last revision of pay was in force from 01.01.1996, the Dearness Allowance was paid substantially to the employees. The calculation of pension was therefore considered liberally by the Government by specific order in that regard. The Government had decided that 50% of the Dearness Allowance should be treated as part of basic pay. Keeping that object in view, the Government of India, Ministry of Finance, Department of Expenditure issued Office Memorandum dated 01.03.2004, which reads as under:-

"New Delhi,dated the 1st March,2004

OFFICE MEMORANDUM

Subject : Merger of 50% of Dearness Allowance/Dearness Relief with basic pay/ pension to Central Government employees/ pensioners w.e.f 01/04/2004.

1. The Fifth CPC in para 105.11 of their report had recommended that DA should be converted into Dearness Pay each time the CPI increase by 50% over the base index used by the Pay Commission.

2. This recommendation of Fifth CPC has been considered and the President is pleased to decide that, with effect from 01/04/2004, DA equal to 50% of the existing basic pay shall be merged with the basic pay and shown distinctly as Dearness Pay (DP) which would be counted for purposes like payment of allowances, transfer grant, retirement benefits, contribution to GPF, License fee, monthly contribution on to CGHS, various advances, etc. The entitlements of LTC, TA/DA while on tour and transfer and government accommodation shall, however, continue to be governed on the basis of the basic pay alone without taking into account Dearness Pay. In case of existing pensioner, Dearness Relief equal to 50% of the present pension will, w.e.f. 01/04/2004, be merged with pension and shown distinctly as Dearness Pension. Dearness Allowance / Dearness Relief converted into Dearness Pay / Dearness Pension respectively would be deducted from the existing rate of Dearness Allowance / Dearness Relief.

3. To ensure that pensioners retiring between 01.04.2004 to 31.01.2005 do not face any loss and fixation of pension, as a special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay for purposes of computation of pension in respect of basic pay received by them prior to 01.04.2004. Consequently, element of dearness pension will exist only for pensioners retired/retiring from Government of India up to 31.03.2004.

4. Insofar as the persons serving in the

Indian Audit & Accounts Department are concerned, these orders issue after consultation with the Comptroller & Auditor General of India."

6.3 Keeping the above in view more particularly para: 3 thereof, the pension of the petitioner was fixed as under. The following is the undisputed position.

"Date of Birth : 6th September 1944
Date of Superannuation : 30.09.2004
Total qualifying service : 66 Half Years (full 33 years)
Post Held : Office Superintendent
Scale of Pay : 5500 – 175 – 9000
Last Basic Pay drawn : Rs.7425/-
Dearness Pay drawn : Rs.3413/-
Total of 10 months basic pay: 73200/- + D.Pay Rs.36602/-
Basic Pension = 5,491
Com. Value @ 40% = 2196/-
Commuted Pension = 3295/-"

6.4 The above would show that the Office Memorandum dated 01.03.2004, more particularly para : 3 thereof is properly taken into consideration by the Government for the purpose of fixation of pension. Had the benefit of 50% Dearness Allowance was not taken into consideration, the basic pension of the petitioner could not have been Rs.5,491/-, since the last pay drawn by the petitioner was at the stage of Rs.7,425/-. Thus the calculation of pension of the petitioner at the time of her retirement being Rs.5,491/- is accepted position. The petitioner also does not have any dispute in that regard.

6.5 The question cropped up, at the time of revision of pension with effect from 01.01.2006. The general revision of pay was accepted by the Government with effect from 01.01.2006. Therefore pay of all the employees - who were in service as on 01.01.2006 was to be revised. Same way, pension of all the persons who had retired before 01.01.2006 was also require to be revised. The Office Memorandum in this regard was dated 01.09.2008. Para 4.1 of the said Office Memorandum reads as under:-

"4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-
i. The existing pension/family pension.
ii. Dearness Pension, where applicable.
iii. Dearness Relief upto AICPI (IW) average index 536 (Base Year 1982=100) i.e. @ 24% of

Basic Pension/ Basic family pension plus dearness pension as admissible vide this Department's O.M.No.42/2/2006-P&PW(G) dated 5.4.2006
iv. Fitment weightage @ 40% of the existing pension/family pension.

Where the existing pension in (i) above includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension. The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006."

6.6 The pension of the petitioner was required to be revised keeping the above O.M. in view. The authorities revised the pension accordingly. The said calculation is a matter of record. It reads as under.

"Basic Pension	:	Rs.5,491/-
DR @ 24%	:	Rs.1,318/-
Fitment @ 40% (based on the Basic Pension without DP i.e., Rs.3611 as per para 4.1(iv) of O.M. Dated 01.09.2008 of Pre 2006 Pensions)"	:	Rs.1,465/-
		Rs.8,274/-

6.7 The case of the petitioner is that, since at the time of her retirement her basic pension was fixed at Rs.5,491/-, at the time of revision thereof, the Fitment weightage @ 40% needs to be calculated on Rs.5,491/- and not on Rs.3,661/-. It is this grievance which needs to be considered by this Court. At this stage, reference needs to be made to the O.M. Dated 01.09.2008, with specific reference to para : 4.1 thereof which is already quoted above. As per the said O.M., while giving fitment weightage @ 40% of the existing pension, it also needs to be taken care that in the cases where the pension in includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004 (as provided vide O.M. dated 01.03.2004), the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension. We find from record that, it is this exclusion which is objected by the petitioner. We find that, the said objection is unsustainable. Considering Rs.5,491/- as the basic pension at the time of revision also will result in taking into consideration the component of 50% of Dearness Allowance twice which can not be done. Giving fitment weightage @ 40% considering Rs.3,661/- is not to be understood as reduction of pension of the petitioner from Rs.5,491/- to Rs.3,661/- as sought to be canvassed by the petitioner. This argument of the petitioner is rejected.

6.8 We find that, the concession which was granted vide O.M. Dated 01.03.2004 (more particularly para : 3 thereof) was properly taken care of while giving general directions for revision of pension vide O.M. Dated 01.09.2008 (vide para : 4.1 (iv)). We find that, not only the said provision is not under challenge, the said provision is quite logical and rational, since it takes care of the concession which was granted by the Government to the employees retiring between 01.04.2004 and 31.01.2005. (The petitioner had retired in September, 2004). The petitioner is aggrieved by the implementation of the said policy decision. We do not find this grievance to be sustainable. This petition therefore needs to be dismissed.

7. We have also taken note of the order of the Division Bench of this Court dated 21.01.2019 recorded on W.P.No.416 of 2018, whereby the Central Administrative Tribunal was asked to look into the matter again in the review application filed by the petitioner. We have also taken into consideration the order passed by the Central Administrative Tribunal on the said review application being R.A.No. 9 of 2019.

8. On conjoint consideration of the above, we find that the revision of pension of the petitioner with effect from 01.01.2006 is in consonance with the O.M. dated 01.09.2008 read with O.M. dated 01.03.2004 and no exception needs to be made therein. The rejection of the claim of the petitioner by the Central Administrative Tribunal, in this factual background, can not be said to be erroneous in any manner. This petition therefore needs to be dismissed.

9. For the reasons recorded above, the following order is passed.

9.1 This petition is dismissed.

9.2 The order passed by the Central Administrative Tribunal, Madras Bench, Madras dated 24.10.2013 recorded on O.A.No.181 of 2013 is confirmed.

9.3 The order passed by the Central Administrative Tribunal, Madras Bench, Madras dated 17.07.2019 in RA No.9 of 2019 in O.A.No.181 of 2013, rejecting the review application also does not call for any interference.

9.4 No costs. Connected miscellaneous petitions would not survive.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm/35

To:

1.The Sr.Accounts Officer (Pension),
Zonal Accounts Office, CBDT,
Chennai - 34.

2.The Deputy Controller of Accounts,
Zonal Accounts Office, CBDT,
Chennai - 34.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+2cc to M/s.S.K.Thanaki Dhevi, Petitioner-in-Person, S.R.No.36113
+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.36367

W.P.No.15982 of 2021

GJ(CO)
SB(06/07/2022)