IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on: 18.10.2023 | Delivered on: 05.12.2023 |
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CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

AND

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.P.No.7672 of 2018**
**and**
**W.M.P. No.9575 of 2018**

1. Union of India
represented by the
Southern Railway,
Park Town,
Chennai-600 003.

2. The Divisional Personal Officer,
Southern Railway,
Trichy – 620 001.

3. The Senior Divisional Financial Manager,
Southern Railway,
Trichy – 620 001. ... Petitioners

Vs.

1. G. Vadamalai,
Retired Station Master.

2. The Registrar,
Central Administrative Tribunal,
Chennai. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 2nd respondent / Central Administrative Tribunal pertaining to O.A. No.01757 of 2016 dated 11.08.2017 and quash the same.

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| For Petitioners | : | Ms. T.P. Savitha |
| For Respondents | : | Mr. R. Pandian [for R1]<br>Tribunal [for R2] |

**JUDGMENT**

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ Petition has been filed by the petitioners to issue a Writ of Certiorari calling for the records of the 2nd respondent / Central Administrative Tribunal pertaining to O.A. No.01757 of 2016 and to quash the said impugned order dated 11.08.2017.

2. According to the petitioner, the 1st respondent was appointed as Temporary Porter in the petitioners' department on 14.07.1961 and thereafter he was promoted on various posts and subsequently he retired from service on 28.02.1995 on attaining superannuation. His pay was Rs.1,850/- in Pay Scale of Rs.1400-2300 (IV Pay Commission). He was

sanctioned Rs.913/- + Dearness Allowance as pension vide order dated 01.03.1995. After implementation of the V Central Pay Commission, the Railway Board vide Circular in RBE 8 of 1999, wherein it states that the pension of all pensioners irrespective of the date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 01.01.1996 of the post last held by the pensioners / deceased Railway servants. Thus, the revision of pension in respect of all pre-1996 pensioners / family pensioners had also been originally made with reference to the higher replacement scale as applicable to those who are in service as on 01.01.1996. In the Office Memorandum dated 11.05.2001 forwarded by Railway Board's Letter No.F(E)III/99/PN1/20 dated 20.08.2001, it has been clarified that “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 with effect from 01.01.1996 of the post last held by the pensioner” wherever used in Board's Letter dated 15.01.1999 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 on 01.01.1996 of the scale of pay held by the pensioner at the time of retirement / death while in service”. The said Railway Board's letter dated

20.08.2001 was challenged before the Tribunals and High Courts and also filed an appeal before the Hon'ble Supreme Court in Civil Appeal No.3174 of 2006 dated 23.11.2006 and the same was decided that *the pre-1996 pensioners are not eligible for revision of pension with reference to the higher replacement scale as applicable to those who are in service as on 01.01.1996.*

2(i) The present case of the 1st respondent who is pre-1996 pensioner is not entitled to the fixed pension in higher replacement scale of Rs.5000-8000 and that the pension revised in scale of Rs.4500-7000 with effect from 01.01.1996 stands correct. But the 1st respondent filed an O.A. No.1757 of 2016 by challenging the order passed by this petitioner dated 03.12.2008 on implementation of the recommendations of 6th Pay scale and to direct the petitioners to refix his basic pension at Rs.6,750/- with effect from 01.01.2006 and thereafter to refix his pension on implementation of the recommendations of VII-CPC with effect from 01.01.2016. In fact, the 1st respondent was superannuated on 28.02.1995 and his pay was fixed at Rs.1,850/- in pay scale of Rs.1400-2300 (IV Pay Commission). The relevant scale of pay in V Pay Commission is Rs.4500-20200 with Grade

Pay for Rs.2,800/- . The pension revision at Rs.6,269/- in the scale of pay of Rs.5200-20200 with Grade Pay of Rs.2,800/- stands correct. While so, the 3rd petitioner filed a detailed reply statement in O.A. No.01757 of 2016 by explaining as to how the 1st respondent was not entitled to the relief claimed by him. Thereafter, the Tribunal by its order dated 11.08.2017 has allowed the claim of the 1st respondent, without considering the contentions raised by the petitioners. The Tribunal wrongly relied upon the order passed in Ernakulam Bench in O.A. No.1135 of 2013 dated 12.06.2015. The Ernakulam Bench by following the order of the Principal Bench in O.A. No.655 of 2010 and the same was upheld by the Delhi High Court and the Special Leave Petition filed against the same was also dismissed. Therefore, the Ernakulam Bench concluded by holding that the pre-2006 pensioner is entitlement to get 50% of the minimum of the pay in the revised Pay Band plus Grade Pay of the post from which he retired.

2(ii) In fact, the Tribunal failed to consider that the pre-1996 pensioners are not eligible for revision of pension with reference to the higher replacement scale as applicable to those who are in service as on 01.01.1996. The 1st respondent, who is a pre-1996 pensioner is not entitled to be fixed pension in higher replacement scale of Rs.5000-8000 and that the pension revised in scale of Rs.4500-7000 with effect from 01.01.1996 stands correct. The Tribunal failed to consider that the 1st respondent's pension refixed to VI Pay Commission corresponding scale of Rs.4500-7000 is correct and the 1st respondent is not entitled for higher replacement scale (V Pay Commission) in the scale of Rs.5000-8000. Therefore, the order passed by the Central Administrative Tribunal by allowing the O.A. No.01757 of 2016 dated 11.08.2017 filed by the 1st respondent is liable to be set aside.

3. According to the respondent, the 1st respondent was working under the petitioners' department and he entered into the service as Temporary Porter on 14.07.1961 and thereafter he got promotions and on attaining the age of superannuation, the 1st respondent was holding the post of Station Master Grade-II and he retired from his service on 28.02.1995. At the time of his retirement, he was drawing the pay scale of Rs.1400-2300 and his pension was fixed at Rs.913/- per month. Consequent to the implementation of the V Pay Commission recommendations, the pay scale of Rs.1400-2300 was replaced to Rs.5000-8000 and his pension was also

revised to Rs.2,773/- per month. When the recommendations of the VI CPC were implemented with effect from 01.01.2006, the pay scale of Rs.5000-8000 was replaced by Rs.9300-34900 in Pay Band-2 with Grade Pay of Rs.4,200/- for the post of Station Master Grade-II.

3(i) According to the 1st respondent, at the time of revision of his pension with effect from 01.01.2006, the petitioners have wrongly reckoned his pension in Pay Band-2 of Rs.5200-20200 with Grade Pay of Rs.2,800/- and revised pension at Rs.6,269/- with effect from 01.01.2006 instead of reckoning his pension in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4,200/- and pension at Rs.6,750/-. Thereby the 1st respondent gave a request before the petitioners on 30.11.2015, but no action was taken as against the request made by the 1st respondent. Hence he filed an Original Application. After the elaborate discussion, the learned Tribunal has allowed the said Original Application by directing the petitioners to refix the pension of the 1st respondent at 50% of the minimum of the Pay Band plus Grade Pay of the VI Pay Commission Pay Scale of Rs.9300-34800 plus Grade Pay Rs.4200/- i.e, at Rs.6,750/- with effect from 01.01.2006 and also to refix his pension as per the VII C.P.C. with effect from 01.01.2016 and to grant him all consequential benefits within a period of three months from the date of receipt of a copy of the said order. Therefore, the order passed by the Tribunal is a reasonable one and thereby, the present Writ petition filed by the petitioners is liable to be dismissed.

4. Heard both sides and perused the entire materials available on record.

5. It is an admitted fact that the 1st respondent retired from his service on 28.02.1995 and his pension was fixed at Rs.913/-. According to the 1st respondent, while implementing the 6th Pay Commission, the petitioners' department ought to have fixed the pension of the 1st respondent at Rs.6,750/- in Pay Band-2 in the pay scale Rs.9300-34900 with Grade Pay of Rs.4,200/-. But the petitioners' department has wrongly fixed the pension in Pay Band-2 in the pay scale Rs.5200-20200 with Grade Pay of Rs.2,800/- and revised pension at Rs.6,269/-. Challenging the same, the 1st respondent has filed an Original Application before the 2nd respondent / The Central Adminstrative Tribunal.

6. Per contra, the petitioners' contention is that the 1st respondent retired on superannuation on 28.02.1995 and his scale of pay was Rs.1,850/- in the Pay Scale Rs.1400-2300 and he was sanctioned Rs.913/- plus Dearness Relief as pension. The said Pay Scale was revised to Rs.4500-7000 and to Rs.5200-20200 plus Grade Pay Rs.2,800/- in the V and VI Pay Commissions respectively. Consequently, the pension of the 1st respondent was revised to Rs.6,269/-. Thereafter, the Railway Board vide its Letter RBE No.160 of 2001 dated 20.08.2001 has clarified as follows:-

> *"2. The actual connotation of the "post last held" by the pensioner at the time of retirement / death while in service has now been clarified by the DOP&PW, which is the nodal department in all pensionary matters and empowered to give final interpretation to the rules and orders relating to such matters. Accordingly, it is hereby clarified that the sentence "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 pensioner" wherever used in Board's letters No.F(E)III/98/PN1/29 dated 15.1.1999 (RBE 8/99), 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 on 1.1.1996 of the scale of pay held by the pensioner at the time of retirement/death while in service. Similarly, w.e.f. 1.1.1996 family pension shall not be less than 30% of the minimum of the corresponding scale as on 1.1.1996 of the scale of*

> *pay held by the pensioner/deceased Railway servant".*

6.1. The said Railway Board's clarification order vide letter dated 20.08.2001 was challenged before the various Courts. Finally the Hon'ble Supreme Court in Civil Appeal No.3174 of 2006 dated 23.11.2006 decided that "*the pre-1996 pensioners are not eligible for revision of pension with reference to the higher replacement scale as applicable to those who are in service as on 01.01.1996".* This petitioner retired on 28.02.1995 ie., prior to 1996. Therefore, he is not entitled to the fixed pension in higher replacement scale of Rs.5000-8000 and that the pension revised in scale of Rs.4500-7000 with effect from 01.01.1996 stands correct. But the Tribunal has relied on the judgment of the Ernakulam Bench and allowed the Original Application filed by the 1st respondent and directed the petitioners' department to refix the pension of the 1st respondent at 50% of the minimum of of the Pay Band plus Grade Pay of the VI Pay Commission Pay Scale of Rs.9300-34800 plus Grade Pay Rs.4200/- ie., at Rs.6750/- w.e.f. 1.1.2006 and also to refix his pension as per the VII CPC w.e.f.1.1.2016 and to grant him all consequential benefits within a period of three months. The Tribunal has failed to consider the above decision of the Hon'ble Supreme Court.

6.2. The learned counsel appearing for the petitioners has relied upon the decision in ***K.S. Krishnaswamy and others v. Union of India and another reported in (2006) 13 Supreme Court Cases 215*** wherein the Hon'ble Supreme Court in Para-17 held as follows:-

> *"17. The main thrust of the submissions of learned counsel for the appellants is that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners. We are unable to accept this contention. As noticed above, the recommendations of the Fifth Pay Commission were accepted to the extent of policy resolution dated 30-9-1997. The aforesaid Policy Resolution was further clarified by issuing instructions in OM dated 17-12-1998, which were clarified by another executive instructions in OM dated 11-5-2001. It is well-settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. It is also well-settled principle of law that a policy decision of the Government can be reviewed/altered/modified by executive instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of estoppel. In the present case, the recommendations of the Fifty Pay Commission were accepted by a Policy Resolution dated 30-9-1997 that the ceiling on the amount of pension will be 50% of the highest pay in the Government. The pension of all pre-1-1-1996 retirees*

*including pre-1986 retirees shall be consolidated as on 1-1-1996, but the consolidated pension shall not be brought on to the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. The subsequent OM dated 17-12-1998 clarified the Policy Resolution dated 30-9-1997 by executive instructions in OM dated 17-12-1998 and further clarified in the form of OM dated 11-5-2001 clarifying the contents of Policy Resolution of the Government dated 30-9-1997. They are both complementary to each other. Both clarify the government Policy Resolution dated 30-9-1997. The appellants are not aggrieved by the executive instructions in OM dated 17-12-1998. In our view, therefore, the contention of the appellant that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998, thereby creating two classes of pensioners is absolutely ill-founded and untenable".*

7. Further, the learned counsel for the petitioners also relied upon the judgment of this Court in the case of ***Union of India v. N. Ramasamy and another in W.P. No.19697 of 2017 dated 03.12.2018,*** wherein this Court allowed the said Writ petition by setting aside the order of the Tribunal and directed to consider the matter afresh.

8. In the present case also, the facts are identical and therefore the order of the Tribunal is liable to be set aside by allowing this petition. The Tribunal has mainly relied upon the judgment of Ernakulam Bench but the

said facts are distinguishable and thereby the said judgment will not be applicable to the facts of the present case.

9. Therefore as discussed supra and in view of the above said judgment, we are inclined to set aside the order of the Tribunal. Accordingly, the order of the Tribunal is set aside and the matter is remitted back to the Tribunal to consider afresh to dispose the Original Application on merits within a period of **12 (twelve)** weeks from the date of receipt of a copy of this order and both parties have to co-operate for the early disposal of the case.

11. With the above directions, this Writ petition is allowed. No Costs. Connected miscellaneous petition is closed.

**(D.K.K.J) & (P.D.B.J)**
05.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
mjs

**D.KRISHNAKUMAR, J.,**
**and**
**P.DHANABAL,J**

(mjs)

To

The Registrar,
Central Administrative Tribunal,
Chennai.

Pre-delivery judgment in
**W.P.No.7672 of 2018**

05.12.2023