



2025:DHC:1520-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27.02.2025

(11)+ W.P.(C) 2978/2022

(12)+ W.P.(C) 12268/2022

PREM KUMAR

.....Petitioner

SURENDER PRAKASH NAYYAR

.....Petitioner

Through: Dr.S.S.Hooda, Mr.Aditya
Hooda, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms.Nidhi Raman, CGSC,
Mr.Akash Mishra, Mr.Arnav
Mittal, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed by the petitioners, challenging paragraph 3(V) (wrongly mentioned as paragraph 2(V) in the prayer clause) of the Office Memorandum ('OM') No. 45/22/97-P&PW(C) dated 03.02.2000 issued by Department of Pension and Pensioners' Welfare, to the limited extent that it caps the aggregate of the service and disability element of pension at the pay last drawn, for 100% disability.

2. As both the petitions raise similar grievances and challenge in



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law, to appreciate the same, we have taken the facts from W.P.(C) 2978/2022.

3. The learned counsel for the petitioners, referring to the OM No. 45/22/97-P&PW(C) dated 03.02.2000, submits that paragraph 5 of the said OM, recognizing that persons suffering from different percentages of disability cannot be equated for grant of the disability element of pension, provides for a graded percentage of disability for the computation of the disability element of pension. He submits that, however, the effect of the Impugned Paragraph 3(V)(1) of the Impugned OM is that a person having a disability of even 1% will get the aggregate of service and disability elements of pension equivalent to his pay last drawn, and so would a person who has 100% disability, due to the ceiling of the aggregate of the service and disability element of pension at the pay last drawn, for 100% disability. He submits that this capping of the aggregate of the service and disability elements is, therefore, violative of Article 14 of the Constitution of India, and cannot be sustained.

4. He submits that realizing the above anomaly, in the OM No. 1/4/2016-P&PW(F) dated 12.10.2017, issued in the implementation of the recommendations of the 7th Central Pay Commission ('CPC'), it has been provided that the personnel will get disability pension comprising of the service element equal to 50% of the notional pay as on 01.01.2016 and disability element equal to the same notional pay as on 01.01.2016 for 100% disability, and that for lower percentage of



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the disability, the disability element shall be proportionately lower subject to the provisions of Rule 8 of the Central Civil Services (Extraordinary Pension) Rules. Therefore, the ceiling on the aggregate of service element and disability element of pension has been done away with.

5. He submits that even prior thereto, as far as the Higher Administrative Grade (HAG) Officers are concerned, the said ceiling had been withdrawn by the OM No.45/3/2008-P&PW(F) dated 30.09.2010.

6. He submits that the effect of the Impugned Paragraph is a reduction in the pension of the petitioner, as reflected in the Pension Payment Orders dated 03.10.2019 and 25.10.2019, wherein the petitioner's pension has been reduced by relying upon the above Clause that provides for the ceiling of the aggregate amount of the service and disability elements of pension.

7. On the other hand, the learned counsel for the respondents submits that the petitioner, though had been invalidated out of service in February, 2003, did not challenge the above condition till the filing of the present petition in the year 2022.

8. She further submits that the Impugned OM dated 03.02.2000 has been issued in acceptance of the recommendations of the 5th CPC, which consisted of experts in the field, who have given the recommendations after due deliberation and after public hearing. In this regard, she places reliance upon the judgment of the Supreme



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Court in *Secretary, Finance Department & Ors. v. West Bengal Registration Service Association and Ors.*, 1993 Supp (1) SCC 153, to submit that the Courts generally leave it to the expert bodies like Pay Commission, etc. to determine the pay scale and other benefits as the Courts are not the expert bodies in this field. She submits that, therefore, in the present case, there is no reason to interfere with the OM dated 03.02.2000.

9. We have considered the submissions made by the learned counsels for the parties.

10. The OM dated 03.02.2000 has been issued by the Government of India to implement the recommendations of the 5th CPC. It broadly categorises the cases for determining the compensation payable for death or disability under five distinct categories, that is, from Category 'A' to Category 'E'. Category 'E' reads as under:-

“Category ‘E’ Death or disability arising as a result of (a) attack by or during action against extremists, anti-social element etc., and (b) enemy action in international war or border skirmishes and warlike situations, including cases which are attributable to (i) extremists acts, exploding mines etc. while on way to an operational area: (ii) kidnapping by extremists; and (iii) battle inoculation as part of training exercises with live ammunition.”

11. Clause 3(ii)(V) gives the Disability Pension for personnel covered under Category 'E' as under:-

“3. The recommendations of the Commission have been under consideration of the Government for some time. Orders have



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already been issued regarding ex-gratia payment in case of death in service vide this Dept.'s OM No.45/55/97-P&PW(C) dated 11.09.98. In respect of disability pension/family pension, the President is now pleased to decide as under:-

xxx

(ii) In cases covered under categories (B), (C), (D) & (E) the scales of the family pension/disability pension would be as under:-

xxx

V. Disability Pension - For cases covered under category 'E'

(1) Disability pension, comprising a service element equal to the retiring pension and gratuity to which the employee would have been entitled to on the basis of his pay on the date of invalidation but counting service upto the date on which he would have retired in normal course and disability element equal in amount to the pay last drawn subject to the condition that the aggregate of the service and disability elements shall not exceed the pay last drawn, for 100% disability.

(2) For lower percentage of disability, the disability element shall be proportionately lower as at present."

12. A reading of the above would show that the Disability Pension for a personnel falling in Category 'E' shall be comprising of a service element equal to the retiring pension and gratuity to which the employee would have been entitled to on the basis of his pay on the date of invalidation but counting service upto the date on which he would have retired in normal course, and a disability element equal in amount to the pay last drawn, however, it is made subject to the condition that the aggregate of the service and disability elements



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shall not exceed the pay last drawn, for 100% disability.

13. Clause 5(i) of the OM dated 03.02.2000, for determining the extent of disability or functional incapacity, divides the same into three categories, which are as under:

“5. The Fifth Central Pay Commission also suggested certain procedural changes. These have also been considered by the Government. The President is now pleased to decided as under:-

(i) The extent of disability or functional incapacity shall be determined in the following manner for purposes of computing the disability element forming part of benefits:-

<i>Percentage of disability assessed by Medical Board</i>	<i>Percentage to be reckoned for computation of disability element</i>
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<i>Less than 50</i>	<i>50</i>
<i>Between 50 and 75</i>	<i>75</i>
<i>Between 76 and 100</i>	<i>100”</i>

14. A combined reading of the two Clauses would show that a person having disability of even less than 50% may end up getting the aggregate of service element and disability element of pension equivalent to the last drawn pay. The same could be the case for a person suffering from 100% disability due to the ceiling on the aggregate of the service and disability element of pension at the pay last drawn, for 100% disability, thereby making two unequals equal, which is violative of Article 14 of the Constitution of India. As held by the Supreme Court in ***Atyant Pichhara Barg Chhatra Sangh v. Jharkhand State Vaishya Federation & Ors.***, (2006) 6 SCC 718, the



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mandate of Article 14 of the Constitution of India is “*to treat similar similarly and to treat different differently*”; to treat unequals as equals also violates Article 14 of the Constitution. In the present case, the object of OM itself is to differentiate, for purposes of disability pension, amongst personnel not only on the basis of the manner in which the disability is suffered, but also on the percentage of such disability. The object stands defeated where personnel suffering different extent of disability, though for similar causes, are still treated similarly as far as the grant of disability pension is concerned.

15. It was probably upon recognizing the above anomaly that in the OM dated 30.09.2010, as far as the HAG and above are concerned, the said ceiling was done away with and it was provided as under:

“V. Disability Pension for Cases under Category E

(a) Disability pension would comprise of a service element equal to 50% of minimum of Pay in the Pay Band plus Grade Pay or the minimum Basic pay in the revised Scale of pay in case of HAG and above applicable from 1-1-2006, corresponding to the scale of pay last held by the employee subject to proportionate reduction in case his qualifying service upto deemed date of retirement falls short of full qualifying service and disability element equal to the same minimum of pay in the Pay Band plus Grade Pay or the minimum Basic Pay in the revised Scale of Pay in case of HAG and above, corresponding to the scale of pay last held by the employee, for 100% disability subject to the condition that the aggregate of service and disability elements shall not exceed the minimum of Pay in the Pay Band plus Grade Pay/minimum Basic Pay in the



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revised Scale of Pay, in case of HAG and above, applicable from 1.1.2006, corresponding to the scale of pay last held by the employee, for 100% disability.

The condition that the aggregate of service and disability elements shall not exceed the minimum of Pay in the Pay Band plus Grade Pay/minimum Basic Pay in the revised Scale of Pay, in case of HAG and above, applicable from 1.1.2006, corresponding to the scale of pay last held by the employee, for 100% disability- stands withdrawn w.e.f. 1.7.2009.

(b) For lower percentage of the disability, proportionate reduction would be made in disability element as provided in OM dated 3.2.2000 as amended vide O.M. No.45/3/2008-P&PW (F) dated 18.11.2008."

16. The same has now been extended to all by way of the OM 12.10.2017, by removing the ceiling. Clause 3(V) of the OM dated 12.10.2017 reads as under:

"V. Disability Pension for Cases under Category E

(a) Disability pension would comprise of a service element equal to 50% of the notional pay as on 01.01.2016 and disability element equal to the same notional pay as on 01.01.2016 for 100% disability.

(b) For lower percentage of the disability, the disability element shall be proportionately lower subject to the provisions of Rule 8 of CCS(EOP)Rules."

17. While we recognize that this Court, not being an expert body, ought to defer to the opinion of expert bodies like the Pay Commission, however, this is only a self imposed restraint exercised



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by the High Court while exercising its jurisdiction under Article 226 of the Constitution of India. This principle cannot be elevated to a total exclusion of the jurisdiction of the Court. It cannot be said that the Court has no jurisdiction and must close its eyes even if there is an apparent violation of Article 14 of the Constitution of India.

18. As far as the plea of delay in filing of the present petitions is concerned, in the present case, as is evident and explained hereinabove, two unequals have been treated as equals by the impugned Clause of the OM dated 03.02.2000, the effect whereof was felt by the petitioner in the Pension Payment Order dated 25.10.2019. The present petition has been filed after making a representation thereagainst, which the respondents rejected *vide* letter dated 15.09.2021. Therefore, there is no delay in the filing of the present petition as well. In any case, pension being a continuous cause of action, there is no period of limitation prescribed for the same. In this regard, we may refer to the celebrated judgment of the Supreme Court in *Union of India v. Tarsem Singh*, (2008) 8 SCC 648.

19. In view of the above, the Impugned ceiling/restriction contained in Paragraph 3V(i) of the OM dated 03.02.2000, to the extent that it provides a ceiling that the aggregate of the service element and the disability element of pension cannot exceed the pay last drawn, is hereby set aside.

20. The payment of pension to the petitioners shall be recalculated by the respondents by not restricting it in terms of the impugned



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clause and the differential if any, shall be paid to the petitioners (in both the petitions), within a period of six weeks from today. Let the necessary revised Pension Payment Order be issued by the respondents within a period of six weeks from today.

21. The petitions are disposed of with the above directions.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 27, 2025/Arya/SJ

Click here to check corrigendum, if any