

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 117 OF 2017 (S.B.)

Shri Prabhakar Ramchandra Kharbade,
Aged about : 79 years, Occ. Retired, R/o Plot No. 51-A,
Kalyaneshwar Nagar, Near Shiv Mandir, Manewada-Besa Road,
Nagpur-27.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai-32.
- 2) Superintendent of Police,
Railways, Ajni, Nagpur.
- 3) Accountant General (A & E) – II,
Maharashtra Civil Lines,
Nagpur-01.
- 4) Senior Treasury Officer,
O/o District Treasury, Civil Lines,
Nagpur-01.

Respondents

Shri A.K.Waghmare, the Id. Adv. for the applicant.

Shri M.I.Khan, the Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 21st day of March, 2018)

Heard Shri A.K.Waghmare, the learned counsel for the applicant and Shri M.I.Khan, the learned P.O. for the respondents.

2. In this O.A., the applicant is claiming following reliefs:-

i) Declare that the column no. 3 of the ready reckoner of the G.R. dated 05.05.2009 (pg. no. 36 of Annx-5) is not correctly printed as per the G.R. dated 05.05.2009 and hence the third column of the ready reckoner attached to the said G.R. dated 05.05.2009 be declared as null and void and not binding on the applicant;

ii) Further, this Hon'ble Tribunal be pleased to direct the respondent and more particularly respondent nos. 3 & 4 to re-fix the basic pension as on 01.08.2004 @ Rs. 3534/- and also to re-fix the basic pension as on 01.01.2006 @ Rs. 7987/- as well as consolidated pension as on 01.01.2006 @ Rs.15,176/-;

iii) Further be pleased to grant difference of arrears from 01.08.2004 till December 2015 to the tune of Rs. 18,12,788/- as per annexure no. A-3 (pg. no. 28-30) of the Original Application along with 18 % interest.

3. It seems that for almost similar claim, the applicant earlier filed O.A. No. 77/2016 before this Tribunal and the Tribunal has delivered a Judgment in that case on 27/10/2016 and the application was disposed of with liberty to the applicant to file a comprehensive representation, making it clear as to how he had been wrongly paid and to which exact pay, he is entitled to. The applicant was allowed to file a comprehensive representation within a week and it was further directed that in case such representation is filed, the respondents shall consider such representation on its own merits within a period of three months from the date of receipt of representation and shall convey the decision taken thereon in writing to the applicant.

4. In view of the aforesaid directions, the applicant has preferred a representation dated 11/11/2016 which is at (Annexure-A-10) at P.B., Pg. No. 49 to 57 (both inclusive). The Judgment passed by this Tribunal in O.A.77/2016 is at (Annexure-A-9) which is at P.B. Pg. 45 to 48 (both inclusive).

5. The representation of the applicant has been rejected by Senior Treasury Officer, Nagpur, vide impugned communication dated 01/12/2016 which is at P.B., Pg. No. 20 and 21 and, therefore, this O.A. is filed.

6. The applicant was appointed as a Constable in Railway Police by respondent no. 2 and was subsequently promoted as a Head Constable in the Pay Scale of Rs. 975-25-1150-30-1660. On 04/03/1991, he applied for voluntary retirement and his request was accepted. It is the case of the applicant that he was receiving the basic pension as per 4th Pay Commission @ Rs. 751/- during the period from 03/06/1991 to 31/12/1995. Subsequently his pension was fixed as on 01/01/1996 @ Rs. 2356/-. As per G.R. dated 20/07/2004, the Government granted additional amount in the basic pension/ pay named as Dearness @ Rs. 50% of the last basic pay but this fact was ignored by the respondents. As per G.R. dated 05/05/2009, the basic pay scale was consolidated w.e.f. 01/01/2006 and the pension was wrongly fixed at Rs. 5324/- instead of Rs. 15,176/-. The pension was lastly consolidated

as per this Pay Commission and the applicant has suffered monetary loss of Rs. 18,12,788/- and, therefore, the applicant has prayed for the re-fixation of his pension and the differences. It is stated that all the points were properly raised in the representation but the said representation has been rejected without application of mind.

7. The respondent no. 1, 2 & 4 have filed separate affidavits-in-reply. The respondent no. 4 is a Senior Treasury Officer, Nagpur and the competent authority and had justified the order of fixation. The respondent no. 1 also justified the order of rejection of applicant's representation.

8. Perusal of the affidavits-in-reply filed by the respondent no. 1, 3 & 4 shows that the respondents are coming with a cogent case that whatever fixation is made was properly made by the competent authority. They denied that the pension was not properly fixed. In para no. III to VI filed by respondent no. 4, it is stated as under:-

iii) It is pertinent to mention here that pension finalizing authority is the office of the respondent no. 3, while the office of the respondent no. 4 is the pension disbursing office. The disbursement are based on the authority given by the office of the respondent no. 4 in the applicant case the basic pension fixed by the office of the respondent no. 3 was Rs. 2,356/- while the commuted pension amount was Rs. 250/- i.e. the commuted Pension amount was Rs. 2,106/- as per order. The office of the respondent no. 4 has not made any changes in the above detail while undertaking any revision with respect to 6th Pay Commission recommendations.

iv) It is submitted that the Government of Maharashtra has issued Government Resolution dated 20.07.2004 in respect of merger of 50 % D.A. in the basic pension w.e.f. 01.08.2004 and accordingly the applicant case was considered.

Basic Pension as on 04.06.1991	Rs.2,356/-
Dearness Pay (D.P.) (50% of Basic Pension)	Rs.1,178/-
Total Amount	Rs.3,534/-

v) The basic Pension mentioned by the applicant in the present original application is arrived at by his own calculations whereas at the pension disbursing level. The basic pension is the amount which has been conveyed by the pension disbursing authority i.e. the office of the respondent no. 3 hence the revision of the applicant as per the provisions of the Government Resolution dated 05.05.2009 (applicable these who have retired before 01.01.2006) and as in Clause 2 (d) of the abovesaid Government Resolution it is as follows:-

(A)	Basic Pension as on 01.01.2006	Rs.2,356/-
(B)	Dearness Pay (D.P.)	Rs.1,178/-
(C)	Dearness Allowance (D.A.) 24%	Rs.848/-
(D)	40% increased with respect to basic Pension with ref to A above Revised Pension on 01.01.2006 to Basic Pension	Rs.942/-
Total of A+B+C+D		Rs.5,324/-

It is also important to mention here that the revised pension of the applicant is also as per the ready reckoner indicating admissible revised pension due on 01.01.2006. In addition to this it is stated that if the calculation is done using general guideline of multiplying the basic pension by 2.26 i.e. $2356 \times 2.26 = 5324$. The approximately amount arrived at is also same as arrived earlier. Thus from the above it is amply clear that the calculation of revised pension has come to Rs. 5,324/- which is same as that has been finalized by the office of the respondent no. 4.

vi) Hence the question of wrongly calculating any amount does not arise. The Government Resolution dated 30.10.2009 mentioned by the applicant is applicable to pensioners who have retired after 01.01.2006, the present applicant was retired on 04.06.1991 i.e. before 01.01.2006 some provision of the abovesaid Government Resolution are not applicable to him and the revised pension claimed by him is not applicable. Since the applicant retired before 01.01.2006, his pension was fixed as per the provisions of Government Resolution dated 05.05.2009 which has a provisions of 40% fitment weightage. The office of the respondent no. 4 has correctly calculated and fixed revised pension accordingly mentioned above as per provisions of Government Resolution dated 05.05.2009. It is pertinent to mention here that the office of the respondent no. 4 across the state have been using the software PAS (Pension Automatic System) for making payments till 2011. This software had been developed as a common system and all. Treasuries across Maharashtra and was approved by Directorate (Account and Treasuries), Mumbai. So the question of any wrong calculation does not arise.

9. The respondent no. 1 has also justified the fixation of the pension of the applicant and / reiterated the stand taken by respondent no. 4, which is the Expert Body. The Id. P.O. has placed reliance on the Judgment delivered by the Hon'ble Apex Court in case of **I.T.I. LTD. Vs. K. Chandragupta & Another reported in (2001) 10 Supreme Court Cases 89** at P.B., Pg. No. 89. In para no. 5 of the said Judgment, the Hon'ble Apex Court has observed as under :-

"In course of hearing of this appeal, a calculation has been presented before us which indicates that while adopting the method for fixation of total emoluments of the respondent, there has been some reduction in as much as, according to the calculation given, his basic salary should have been Rs. 2800/-. We are not examining the correctness of the principles under which the basic salary of the respondent has been fixed at Rs. 2600 as that was not a cause of action in the present appeal. Suffice it to say that the respondent would be entitled to take such remedial measures, if so advised, if he thinks that the employer had erroneously fixed his basic salary on 01.04.1987 at Rs.2600. He may also put in a representation to the employer giving the methods of calculation. We express no opinion on the correctness of the same. But, in view of our conclusion that the basic salary of the respondent in Grade-I officer has not been reduced, the impugned judgment of the High Court cannot be sustained. Accordingly, the impugned judgment is set aside and this appeal stands allowed."

10. Perusal of the affidavit-in-reply filed by respondent no. 1 & 4, clearly shows that these respondents have justified the manner in which, the pension was fixed and it seems that the respondent authorities have considered various aspects and various circulars issued by the Government from time to time and have rightly fixed the pension of the applicant. I, therefore, do not find any merits in the O.A. and hence the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 21/03/2018

**(J.D. Kulkarni)
Vice-Chairman (J).**

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