

Higher replacement
scale

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)**

.....

No. F(E)III/99/PN1/20.

NEW DELHI

Dated: 12.12.2002

**The General Managers & FA&CAOs,
All Zonal Railways and Production Units.**

**Sub: Implementation of Government's decision on the recommendations of the
Vth Central Pay Commission – Clarification regarding Post/Scale of pay
held by the retired Railway servant.**

In continuation of Board's letter of even number dt. 5.6.2002, a copy of CAT, Principal Bench, New Delhi, judgement dt. 20th September, 2002, in O.A. No. 480/2001 filed by Shri S.C. Parasher, retired DDG, AIR Vs. UOI, upholding the authority under which the O.M. No. 45/86/97-P&PW(A) (Pt.) dt. 11.5.2001 was issued, is enclosed for information and guidance. In the present judgement, Hon'ble Tribunal have come to the conclusion that for the purpose of stepping up of consolidated pension of pre-1996 pensioners to 50% of the minimum of the Vth CPC scale of pay introduced w.e.f. 1.1.1996 in terms of DOP&PW's O.M. No. 45/10/98/P&PW(A) dated 17th December, 1998, the Vth CPC revised scale of pay which is to be taken into account is the one that corresponds to the scale of pay held by the Government servant at the time of retirement and not the higher replacement scale of pay introduced subsequent to the date of retirement. It is desired that if any similar application is being contested by your Railway before CATs/Courts or to be filed in future, the contents of the present judgement should be brought to the notice of the CATs/Courts praying for dismissal of the application on the basis of this judgement.

The instructions contained in DOP&PW's OM dt. 17.12.1998 and 11.5.2001 were circulated/adopted vide Board's letter No. F(E)III/98/PN1/29 dt. 15.1.1999 and F(E)III/99/PN1/20 dt. 20.8.2001.

Please acknowledge receipt.


(S.SREERAM)
Dy. Director Finance (Estt.) III,
Railway Board.

Copy to:

**EDPC-I, DPC, EDV(E), DS(D), EDE (Res), EDE, JS, JS(G), JS(E), US(D),
Branches E(G), ERB-III, E(O)I, II, III & (CC), PC-III, IV, V, E(P&A)I, II & ERB-I.**

Copy to:

**Smt. Ganga Murthy, Director (Pension), Department of Pension & Pensioners' Welfare,
3rd Floor, Lok Nayak Bhavan, Khan Market, New Delhi.**

बोर्ड के दिनांक 5-6-2002 के समस्त पत्र के क्रम में सी.ए.टी.पी.डी.नई दिल्ली के दिनांक 20-9-2002 के आदेश की प्रति सुपुनार्थ और मार्ग दर्शन के लिए इस पत्र के साथ संलग्न की जाती है। कृपया इसी तरह के अन्य केंद्रों में इस आदेश/निर्णय को सी.ए.टी.पी.डी. के समक्ष रखकर केस को सांभाल करने का निवेदन किया जाय।

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.480/2001

New Delhi, this the 20th day of September 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri S.C. Parasher
Deputy Director General (Retired)
All India Radio
R/O A-409, Nilgiri Apartments
Alaknanda, New Delhi - 19

.....Applicant

(By Advocate: Ms. Kavita Wadia)

Versus

1. Union of India through
The Secretary
Government of India
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi-1
2. The Secretary
Ministry of Personnel
Public Grievance & Pension
North Block, New Delhi-1
3. Director General
All India Radio,
Akashvani Bhawan
New Delhi
4. Pay & Accounts Officer
IRLA, Group
Ministry of Information & Broadcasting
Room No.519, AGCR Building
New Delhi - 2

.....Respondents

(By Advocate: Shri Madhav Panikar)

Handwritten signature/initials

Shri S.A.T. Rizvi

The Office Memorandum dated 17.12.1998 issued by the Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India (hereinafter referred to as 'DOP&PW') (A-3) laid down as under:

".... The President is now pleased to decide that w.e.f. 1.1.1996, 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 introduced w.e.f. 1.1.1996 of the post last held by the pensioner...."

2. The applicant's case is that by relying on the above-mentioned decision, his pension should have been fixed at Rs 9200/- PM w.e.f. 1.1.1996 against Rs.6392/- PM fixed with effect from the same date by the letter dated 12.8.1999 (A-1) issued by the Central Pension Accounting Office, Ministry of Finance, Government of India. The applicant, at the time of his retirement from service on 31.3.1979, held the post of Deputy Director General, All India Radio and the said post has been placed in the pay grade of Rs.18400-22400/- w.e.f. 1.1.1996 in consequence of Government's decision on the 5th CPC's recommendations. Aggrieved by the aforesaid pension fixation resulting in recurring financial loss to the applicant, he filed representations, including the one dated 8.9.1999. After considering the same the Pay & Accounts Office (IRLA) in the Ministry of Information & Broadcasting have issued a letter dated 3.1.1999 (A-1(a)) rejecting the applicant's claim. The relevant portion of the aforesaid letter reads as follows:-

"The matter was referred to Deptt of Pension and Pensioners' welfare and they have clarified that the replacement scale for revision of pension should be taken w.r.t the scale which the Govt. Servant has been holding as on the date of retirement i.e. Rs 2000-125-2250 not the upgraded scale of Rs 2250-2500 as the upgradation took place after the

retirement of the Govt. Servant. So your pension already fixed in the replacement scale of Rs.14300-18300 is correct."

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Both the aforesaid letters A-1 and A-1 (a) have been impugned in the present OA.

3. The respondents have contested the OA and have filed a reply, to which a rejoinder has been filed on behalf of the applicant. The respondents have not denied the decision conveyed vide DOP&PW's OM dated 17.12.1998 as above. They have, however, relied on the clarification thereto subsequently issued on 11.5.2001 by the DOP&PW. The relevant portion whereof reads as under:-

"The undersigned is directed to refer to this Department's O.M. No.45/10/98 P&PW (A) dated 17th December, 1998 wherein the criteria to be adopted by the Pension Sanctioning authorities while stepping up of the consolidated pension of retirees have been detailed.

In the course of implementation of the above order, clarifications have been sought by Ministries/Departments of Government of India about the actual connotation of the "post last held" by the pensioner at the time of his/her superannuation. The second sentence of O.M. dated 17.12.1998, i.e. "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. 1.1.96 of the post last held by the pensioner", 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 1.1.98, of the scale of pay held by the pensioner at the time of superannuation/retirement.

Other provisos contained in the O.M. of 17th December, 1998 will remain unchanged."

4. We have considered the submissions made by the learned counsel on either side and have also perused the material placed on record. We also found it necessary to peruse the departmental file dealing with the clarification issued on 11.5.2001 in order to find out whether appropriate approvals had been obtained before the aforesaid OM dated 11.5.2001 was

5 The applicant held the post of Deputy Director General in All India Radio at the time of his retirement on reaching the age of superannuation on 31.3.1979. The post of Deputy Director General, at that time, carried the pay scale of Rs.2000-125-2250/-. The aforesaid pay scale was later upgraded to Rs.2250-125-2500/- and this upgradation became effective from 13.1.1984, i.e. after the applicant had already retired. The aforesaid pay scale of Rs.2000-125-2250/- was replaced by the scale of Rs.4500-5700/- in accordance with the recommendations of the 4th CPC. Subsequently, the aforesaid pay scale has been replaced by the scale of Rs.14300-18300/- w.e.f. 1.1.1996 on the basis of the recommendations of the 5th CPC. Thus, the pay scale of Rs.2000-125-2250/-, which the applicant held at the time of his retirement, has been ultimately replaced by the 5th CPC by the scale of Rs.14300-18300/- by relying on the aforesaid clarification of 11.5.2001.

2 It is not in doubt that ~~by~~ by interpreting the President's decision contained in the extract reproduced in paragraph 1 above literally the applicant's pension should instead have been fixed at Rs.9200 PM as the post of D.D.G. has been assigned to the pay grade of 18400 - 22400. 2

6 The learned counsel appearing on behalf of the applicant submitted that the clarification issued vide DOP&PW's OM dated 11.5.2001 is bad in law inasmuch it has been issued without obtaining appropriate approvals. The OM dated 17.12.1998 was issued, according to her, after obtaining the approval of the President which would imply that the proposal contained therein had been approved by the Union Cabinet. The clarificatory OM dated 11.5.2001 is, on the other hand, shown to have been issued by DOP&PW with the approval of the Ministry of Finance. Thus, having not been issued with the approval of the Union Cabinet, the aforesaid OM cannot be relied upon for fixing the applicant's pension.

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7. We have carefully perused the departmental file No.45/86/97-P&PW (A)/Pt.II dealing with the subject of "Implementation of decision of V Pay Commission on pensionary benefits to Central Government employees", and find that the clarificatory OM in question has been issued after a good ^{deal} of consideration at various levels in the Departments of P&PW and Expenditure and only after receiving the approval of the Finance Minister as well as the Prime Minister. A conscious decision was taken on the file to issue the aforesaid clarificatory OM without bothering the Union Cabinet in the matter as the said OM was proposed to be issued only in order to clarify the position so as to remove any ambiguity.

8. The (Transaction of Business) Rules, 1961 provide for Departure from Rules in the following terms

"12. Departure from Rules. - The Prime Minister may, in any case or classes of cases permit or condone a departure from these rules, to the extent he deems necessary."

Prime Minister's approval has been obtained after making it clear on the file that it was not considered necessary to bother the Union Cabinet. The Prime Minister having exercised the authority vested in him in accordance with the aforesaid rule, it cannot be argued that the clarificatory OM in question has been issued without obtaining appropriate approval. That being the case, there is no merit left in the applicant's prayer. In paragraph 47 of the respondents' reply, it has been shown how the applicant's pension has been fixed at Rs.6392/- PM. The calculation has been correctly made by relying on the replacement scale (5th CPC) of Rs 14300-18300/- The others such as S/Shri M N Roy Choudhary and M. S. Batra, both of whom retired as Deputy Director Generals and were junior to the applicant have been correctly granted pension in the pay scale of Rs. 18400-22400/- as both of them had survived in acting service after 13.1.1984 and had accordingly been placed in

the higher pay scale of Rs 2250-2500/- (3rd CPC) before they retired on reaching the age of superannuation. In their case also, the respondents have relied on the aforesaid clarificatory OM of 11.5.2001. The clarificatory OM in question clearly emphasises ~~on~~ the revised (5th CPC) scale of pay of the pensioner given in replacement of the pay scale held by him at the time of his retirement. We are accordingly unable to find any fault with the fixation of applicant's ^{pensioner} ~~pay~~ at Rs.6392/- PM w.e.f 1.1.1996. The decision rendered by this Tribunal (Bangalore Bench) in OA Nos.1014 & 1028 of 2001 on 28.1.2002 (H.L. Nagaraja & Another Versus Union of India & Others) on which reliance has been placed on behalf of the applicant will not assist him either. It is seen that the aforesaid decision is distinguished, inter alia, for the reason that the matter had come up before the Bangalore Bench before the clarificatory OM dated 11.5.2001 had been issued. On a perusal of the aforesaid judgment, we find that the Tribunal has not discussed the aforesaid clarificatory OM in the body of the order.

9. In the light of the foregoing, we find no merit nor any substance in the present OA which is dismissed without any order as to costs.

appro-

(S.A.T. Rizvi)
Member (A)

/Sunil/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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