

By Speed Post

F. No.12/2015/J-II/RTI/Reply

Dated : 03.10.2016

To
M.I.Khadari
D.No.70-7-66/C4
TSR Nagar
Road No.2
Kakinada - 533 005

Sir,

Sub: Information under RTI Act 2005 for supply of certified copies of orders in OA No.231/2012 and CP No.237/2015
Ref: Your RTI application dated 22.09.2016

I	RTI Application	Date of Receipt by Public Authority
II	Particulars of CPIO (i) Name of CPIO (ii) Designation (iii) Off. Telephone NO. (iv) E-mail I D	Smt.Ratna Sudhir Deputy Registrar, Central Administrative Tribunal, 2 nd Floor, BDA Commercial Complex, Indira Nagar, Bangalore-560038. 080 2525 0859 cindiranagar@yahoo.com
III	Whether information requested by the RTI Applicant is being provided. If denied reasons for such denial quoting relevant section of RTI Act.	Yes Query No.1 Copy furnished Query No.2 CP is still pending for disposal
IV	In case the information pertains to other Public authority and the application is transferred under Section 6(3) of the RTI Act, details of the public authority to whom the application is transferred.	N.A
V	Appeal, if any, to be preferred	The first Appeal if any, against the reply from CPIO may be made to the First Appellate Authority, under Section 19(1) of RTI Act, 2005 within 30 days of receipt of reply of C.P.I.O, CAT, Bangalore Bench.
VI	(i) Name of the 1 st Appellate Authority to prefer appeal if any against the reply of CPIO (ii) Off. Telephone No. (iii) Email I D	Hon'ble Shri.Justice Harun-Ul-Rashid, Member (J)/HOD, Central Administrative Tribunal, Bangalore Bench 2 nd Floor, B.D.A Commercial Complex Indira Nagar, Bangalore - 38. 080 2525 9963 cindiranagar@yahoo.com

(Ratna Sudhir)
Deputy Registrar / CPIO

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION Nos.231 & 253 OF 2012

TODAY, THIS THE 8th DAY OF March, 2013

HON'BLE Dr. K.B. SURESH .. MEMBER (J)

HON'BLE SHRI NARESH GUPTA .. MEMBER (A)

1. G.R Parthasarathy, S/o Late G.K. Raja Rao,
Aged 76 years, retd. Chief Telecom Supervisor,
Bangalore Telecom District, residing at No.185/8, New No.51,
1st Floor, Sneha Apartments, 2nd Cross, Devanathachar Street,
Chamarajpet, Bangalore - 560 018.
2. H.N. Ranganath, S/o Sri H. Narayan Rao,
Aged 75 years, retd. Senior Telecom Supervisor,
Bangalore Telecom District, residing at No.734, 4th 'C' Cross,
9th A Main, RPC Layout, Vijayanagar II Stage,
Bangalore - 560 040.
3. A. Narayana Swamy, S/o Late M. Armugam,
Aged 76 years, retd. Senior Telecom Supervisor,
Bangalore Telecom District, residing at No.787, III Main,
HAL III Stage, Bangalore - 560 075.

..... [Applicants in OA No. 231/2012]

1. C.S. Sathya Murthy, S/o Late Seetharamaiah,
Aged 76 years, retd. Telephone Operating Assistant (P),
Bangalore Telecom District, residing at No.3, II B Cross,
8th Main, Sulthanpalya, Bangalore - 560 032.
2. S.N. Sundaram, S/o S.V. Narayanaswamy,
Aged 77 years, retd. OBS Supervisor,
Bangalore Telecom District, residing at No.44, 2nd E Cross,
Hanumanthappa Layout, Sulthanpalya,
Bangalore - 560 032.
3. V. Shankar, S/o Late Venkataswamy,
Aged 76 years, retd. Senior Telephone Supervisor,
Bangalore Telecom District, residing at No.4,
Shaik Nathad Lane, Shivajinagar,
Bangalore - 560 051.

..... [Applicants in OA No.253/2012]

[By Advocate: Shri A.R. Holla]

Vs.

1. Union of India by Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Pensions & Pensioners' Welfare,
Lok Nayak Bhavan, New Delhi - 110 003.
2. The Secretary,
Ministry of Communications,
Department of Telecommunications & IT,
Sanchar Bhavan, No.20, Ashoka Road,
New Delhi - 110 001.
3. The Controller of Communication Accounts,
Department of Telecommunications,
1st Floor, Amenity Block, Palace Road,
Bangalore - 560 001.

Nach 4/4

Respondents

[By Advocate: Smt. P.K. Praneshwari,
Addl. Central Govt. Standing Counsel in both the O.As]

ORDER

Shri Naresh Gupta, Member (A): This is a set of two OAs bearing Nos. 231 and 253 of 2012 with the facts, legal issues involved and the relief sought being similar and accordingly the OAs are being disposed of by this common order. For the sake of convenience, the case file relating to OA No. 231 of 2012 is being utilised as the reference file.

2. The OA bearing No. 231 of 2012 has been filed jointly by G.R. Parthasarathy and 2 others seeking

(i) to quash the order (letter) dated 31.01.2012 (Annexure A10) whereby the applicant, Shri G.R. Parthasarathy was informed that OM No. F. No. 1/1/2008-IC dated 13.11.2009 was applicable to employees who were on duty on 01.01.2006 and not applicable to pensioners who retired before 01.01.2006 and that no order had been received from the Department of Pension & Pension Welfare modifying the Table of benefits in OM dated 14.10.2008,

(ii) a direction to the respondents to extend the benefit of grade pay of Rs. 4600 in terms of OM dated 13.11.2009 (Annexure A6) and fix the pension of the applicants accordingly w.e.f. 01.01.2006, and

(iii) grant of such other relief(s) as deemed fit in the facts and circumstances of the case.

The case of the applicants is as follows:

3. The applicants (in OA No. 231 of 2012) who were all were working in the office of the Senior General Manager, Bangalore Telecom District and were in the pay-scale of Rs. 2000-60-2300-75-3200 retired on the dates noted against their name in the Table below.

Name of Applicant	Post held	Date of Retirement
G.R. Parthasarathy	Chief Telephone Supervisor	31.05.1994
H.N. Ranganath	Sr. Telephone Supervisor	31.01.1995
A. Narayana Swamy	Sr. Telephone Supervisor	30.06.1993

Naresh Gupta -

The pension of the applicants was revised in the pay-scale of 6500-200-10500 w.e.f. 01.01.1996 in pursuance of OM dated 17.12.2008. A copy of the Pension Fixation Statement of the applicants have been marked as Annexure-A/1 series. The recommendations of the 6th Central Pay Commission (CPC, in short) with regard to the revision of Pension were accepted by the Government of India by a Resolution dated 29.08.2008, the revised pension structure being effective from 01.01.2006, with the modification that fixation of pension shall be based on a multiplication factor of 1.86, i.e., Basic Pension + Dearness Pension (where applicable) + Dearness Relief of 24% as on 01.01.2006, instead of 1.74, vide Resolution of the Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances & Pensions, dated 29.08.2008 (Annexure-A/2). In pursuance of the said Resolution, the OM dated 01.09.2008 was issued providing for revision of Pension of pre-2006 pensioners/family pensioners (Annexure-A/3). Para 4.2 of the said OM provides that the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Certain clarifications/modifications were issued to the above OM vide OM dated 03.10.2008 (Annexure-A/4) providing inter alia that the pension calculated at 50% of the minimum of pay would be calculated at the minimum of the pay in the Pay Band (irrespective of pre-revised scale of pay) plus the Grade Pay corresponding to the pre-revised pay scale. In pursuance of the said OM, further clarifications were issued vide OM dated 14.10.2008 (Annexure-A/5) with the Tables showing calculations. Subsequently, the Government of India issued an OM dated 13.11.2009 (Annexure-A/6) merging the 3 pre-revised scales of Rs. 5000-8000, Rs.5500-9000 and Rs.6500-10500 and the Grade Pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500 was granted to those employees who were in the pay scale Rs.6500-10500. The applicants drawing their pension in the scale Rs.6500-10500 (pre-revised) became entitled to the Grade Pay of Rs. 4600 in terms of the said OM.

4. The applicants have submitted that disregarding the said OM, the pension of the applicants was fixed in the Pay Band 2 with Grade Pay of Rs.4200 with effect from 01.01.2006, consequent upon introduction of 6th CPC pay scales. A copy of the Pension Fixation Statements dated 27.07.2011, 12.05.2011, 09.11.2010, 04.02.2011, 02.02.2011 and 09.09.2011 of the applicants Nos. 1 to 6 respectively have been marked as Annexure-A/7 series. The applicant No.1 submitted a

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representation to the Joint Controller of Telecom Accounts on 14.12.2011 pointing out the discrepancy in fixing his pension, in particular, for taking the grade pay of Rs.4200 instead of Rs.4600 (Annexure-A/8) and as there was no favourable response, he submitted a representation to the Deputy Controller of Telecom Accounts on 02.01.2012 with a request to fix his pension taking into account the Grade Pay of Rs.4600 (Annexure-A/9 series). However, the Controller of Communication Accounts, Bangalore, (respondent No. 3), informed the applicant No.1 by an order (letter) dated 31.01.2012 (Annexure A10) that the OM dated 13.11.2009 was applicable to employees who were on duty on 01.01.2006 and not for pensioners who retired before 01.01.2006. Further, no such revision order had been received from the Dept. of Pension & Pensioners' Welfare modifying the Table of Benefits in OM dated 14.10.2008.

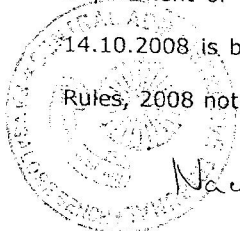
5. The applicants have stated that the Full Bench of the Central Administrative Tribunal, New Delhi, by an order dated 01.11.2011 in OA No.655 of 2010 and connected matters (*Central Government SAG Pensioners Association and Anr. Vs. Union of India and Anr.*), has quashed the clarificatory OM dated 03.10.2008 and the OM dated 14.10.2008 and the respondents were directed to re-fix the pension of all pre-2006 retirees with effect from 01.01.2006, based on the Resolution dated 29.08.2008 and in the light of observations made in the order. It was held that the Commission had decided to enunciate a principle for future revision of pension to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. The guiding principle would assure that past pensioners will obtain complete parity between the pre-1986 and post 1986 pensioners but there will be only a modified parity between the pre-1996 and post 1996 pensioners. The enunciation of the principle would imply that at the time of the next pay revision say, in the year 2006, complete parity should be given to past pensioners as between pre-1996 and post-1996 and modified parity be given between the pre-2006 and post 2006 pensioners.

6. The applicants have contended that the stand taken by the respondent No.3 in the impugned order (Annexure-A/10) that the benefit of OM dated 13.11.2009 (extending the benefit of grade pay of Rs.4600 in place of Rs.4200) was applicable to the employees who were working as on 01.01.2006 and not for those who retired prior to 01.01.2006, was not in accordance with law. The applicants, being pre-1996

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retirees, were entitled to the benefit of the OM dated 13.11.2009 so far as fixation of their pension was concerned. The reliance placed by the respondent No.3 on the Table of Benefits in OM dated 14.10.2008 in the impugned order (Annexure-A/10) that there was no modification in the same was incorrect. The OM dated 03.10.2008 and the OM dated 14.10.2008 had been quashed by the Full Bench of the CAT, New Delhi, by order dated 01.11.2011 in O.A. No.655 of 2010 (*Central Government SAG Pensioners Association and Another Vs. Union of India and Another*) and connected matters, holding that the said clarificatory O.Ms were contrary to the resolution of the Government dated 29.08.2008. As such, the impugned order (Annexure-A/10) was liable to be set aside and the respondents had to re-fix the pension of the applicants in terms of the OM dated 13.11.2009. Having regard to the principle enunciated by the Central Pay Commission as noted by the Full Bench of the CAT, New Delhi, that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision, at the time of the next pay revision say, in the year 2006, complete parity should be given to past pensioners as between pre-1996 and post 1996 and modified parity be given between the pre-2006 and post-2006 pensioners. The distinction of employees made out in the impugned order (letter) (Annexure-A/10) was not sustainable in law.

7. The respondents in their reply have submitted that the pension of the applicants was refixed with reference to the provisions of Office Memorandum dated 03.10.2008 and 14.10.2008 issued by the Department of Pension and Pensioners' Welfare (Annexures-A/4 and A/5). The applicants were seeking re-fixation of their Pensions based on Office Memorandum dated 13.11.2009 issued by the Department of Expenditure, Ministry of Finance, Govt. of India, which is about fixation of the pay of Govt. servants and not about the pension of Pensioners. The benefits of the Grade Pay Rs.4600 cannot be extended to the applicants. In terms of Para 4.2 of Department of Pension and Pensioners' Welfare's OM No.38/37/08-P & PW(A) dated 01.09.2008, the revised pension of a pre-2006 pensioner could not be less than 50% of the minimum pay in the Pay Band plus the Grade Pay corresponding to the pre-revised pay scale from which the pensioner retired. The Table in Annexure I of Department of Pension and Pensioners' Welfare's OM No.38/37/08-P&PW(A) dated 14.10.2008 is based on the First Schedule, Part A, Section I of CCS (Revised Pay) Rules, 2008 notified by the Ministry of Finance (Department of Expenditure). As per



the CCS (Revised Pay) Rules, 2008 and concordance Table referred to above, the corresponding grade pay for the pre-revised pay scale of Rs.6500-10500 is Rs.4200. The Department of Expenditure has issued orders for grant of grade pay of Rs.4600 to the post that existed in the pre-revised pay scale of Rs. 6500-10500 as on 01.01.2006 vide their OM dated 13.11.2009. However, no change seemed to have been made in this respect in the First Schedule, Part A, Section I of CCS (Revised Pay) Rules. As regards the judgment of the Principal Bench of CAT, New Delhi, orders had not been communicated by the nodal Ministry to extend the benefit to the instant applicants, and until orders were received by respondent No.3 from the nodal Ministry, i.e., DOP & PW through the Administrative Ministry, i.e., the Department of Telecommunications, the benefit sought by the applicants could not be extended to them.

8. Heard the learned counsels for the applicants and the respondents on 26.02.2013. It is seen that following the recommendation of the 6th CPC for merger of the three pre-revised scales of pay of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500, the Department of Expenditure, Ministry of Finance vide OM dated 13th November 2009 decided that the posts in the pre-revised scale of Rs. 6500-10500 which were granted the normal replacement pay structure of grade pay of Rs. 4200 in the Pay Band 2, will be granted the grade pay of Rs. 4600 corresponding to pre-revised pay scale of Rs. 7450-11500. The 6th CPC had enunciated a principle for the future revision of pensions to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. An issue which has a bearing on the instant OA was dealt with in OA No. 0655/2010 with OA No. 3079/2009, OA No. 0306/2010 & OA No. 0507/2010, *Central Government SAG (S-29) Pensioners Association & Ors. vs UOI & Ors.*, by the Principal Bench of CAT which said as follows (on 1st day of November, 2011):

137.21 The Commission has decided to enunciate a principle for the future revision of pensions to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. This guiding principle which we have accepted would assure that past pensioners will obtain complete parity between the pre-86 and post-86 pensioners but there will be only a modified parity between the pre-96 and post-96 pensioners. The enunciation of the principle would imply that at the time of the next pay revision say, in the year 2006, complete parity should be given to past pensioners as between pre-1996 and post-1996 and modified parity be given between the pre-2006 and post-2006 pensioners.

Nach Rph-

29. From the above extracted portion it is clear that the principle of modified parity, as recommended by the V CPC and accepted by the VI CPC and accepted by the Central Government provides that revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and grade pay corresponding to revised pay scale from which the pensioner had retired. According to us, as already stated above, in the garb of clarification, respondents interpreted minimum of pay in the pay band as minimum of the pay band. This interpretation is apparently erroneous, for the reasons:

a) if the interpretation of the Government is accepted it would mean that pre-2006 retirees in S-29 grade retired in December, 2005 will get his pension fixed at Rs.23700/- and another officer who retired in January 2006 at the minimum of the pay will get his pension fixed at Rs.27350/-. This hits the very principle of the modified parity, which was never intended by the Pay Commission or by the Central Government;

b) The Central Government improved upon many pay scales recommended by the VI CPC. The pay scale in S-29 category was improved from Rs.39200-67000/- plus Grade Pay of Rs.9,000/- with minimum pay of Rs.43280/- to Rs.37,400-67000/- with grade pay of Rs.10,000/- with minimum pay of Rs.44,700/- (page 142 of the paper-book). If the interpretation of the Department of Pension is accepted, this will result in reduction of pension by Rs.4,00/- per month. The Central Government did not intend to reduce the pension of pre-2006 retirees while improving the pay scale of S-29 grade;

c) If the erroneous interpretation of the Department of Pension is accepted, it would mean that a Director level officer retiring after putting in merely 2 years of service in their pay band (S-24) would draw more pension than a S-29 grade officer retiring before 1.1.2006 and that no S-29 grade officer, whether existing or holding post in future will be fixed at minimum of the pay band, i.e., Rs.37,400/-. Therefore, fixation of pay at Rs.37,400/- by terming it as minimum of the pay in the pay band is erroneous and ill conceived; and

d) That even the Minister of State for Finance and Minister of State (PP) taking note of the resultant injustice done to the pre-11.2006 pensioners (pages 169-170) had sent formal proposal to the Department of Expenditure seeking rectification but the said proposal was turned down by the officer of the Department of Expenditure on the ground of financial implications. Once the Central Government has accepted the principle of modified parity, the benefit cannot be denied on the ground of financial constraints and cannot be said to be a valid reason.

30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.

9. In view of the factual and legal position set out above, the respondents are directed to re-fix the pension and disburse the arrears as early as possible, preferably within a period of 3 months from the date of receipt/ production of a copy of this order. With this direction, the OAs stand disposed of. No order as to costs.

Sd
(NARESH GUPTA)
MEMBER (A)

Sd
(K.B. SURESH)
MEMBER (J)

psp.

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Act

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