

Union of India, vs P.M.Rockey,

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SooperKanoon Citation : sooperkanoon.com/1282138

Court : Kerala

Decided On : Mar-03-2025

Judge : Honourable Mr. Justice Amit Rawal, Honourable Mr. Justice K. V. Jayakumar

Appeal No. : WA/467/2021

Appellant : Union of India,

Respondent : P.M.Rockey,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946 WA NO. 467 OF 2021 AGAINST THE JUDGMENT DATED 30.05.2019 IN WP(C) NO.22171 OF 2012 OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 1-4 AND 6&7:

1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF FOOD AND AGRICULTURE (DEPARTMENT OF FOOD), KRISHI BHAVAN, NEW DELHI-110 001. 2 THE PAY AND ACCOUNTS

OFFICER, CENTRAL PENSION ACCOUNTING OFFICE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, TRIKOOT II COMPLEX, BHIKAJI CAMA PLACE, NEW DELHI-110 066. 3 THE ZONAL MANAGER, THE FOOD CORPORATION OF INDIA, HADDOWS ROAD, CHENNAI-600 006. 4 THE REGIONAL DIRECTOR FOOD FOOD CORPORATION OF INDIA, SOUTHERN REGION, CHENNAI HOUSE, 7, ESPELANADE, CHENNAI-600 106. 5 UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION, NEW DELHI-110 001. 6 THE SENIOR ACCOUNTS OFFICER, PAY AND ACCOUNTS OFFICE, MINISTRY OF FOOD AND PUBLIC DISTRIBUTION, SASTHRI BHAVAN, CHENNAI-600 006. BY ADV. SRI.T.C.KRISHNA, ASG (IN CHARGE) WA NO. 467 OF 2021 -2- RESPONDENTS/PETITIONER & 6TH RESPONDENT: 1 P.M.ROCKEY, AGED 79 YEARS, PALLIPARAMBIL HOUSE, H.NO.XX/2492, PERUMPADAPPU, PALLURUTHY P.O., KOCHI-682 006.

2 THE BRANCH MANAGER, CANARA BANK, THOPPUMPADY, KOCHI-5. BY ADV.: SRI K R GANESH THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WA NO. 467 OF 2021 -3-

JUDGMENT

AMIT RAWAL, J.

The present intra-court appeal at the instance of the Union of India, respondent Nos.1 to 4 and Additional respondent Nos.6 and 7 before the writ court, is directed against the judgment dated 30.05.2019 rendered in Writ Petition No.22171 of 2012, whereby the following reliefs have been sought: (I) issue a writ of certiorari or any other appropriate order for direction to Exhibit P9 order passed by the respondents revising the pension of the petitioner. ii) issue a writ of Mandamus or any other appropriate writ, order or direction directing the respondents to disburse the pensionary benefits to the petitioner and continue to pay the same in

accordance with the directions contained in Exhibit P5 judgment.

2. Vide the judgment impugned, Ext.P9 order

dated 28.08.2012 revising the pension of the respondent - petitioner at Rs.4,274/- (Rupees Four thousand two hundred and seventy four only) from 01.01.1997 to 31.12.2006 and Rs.9901/- from 01.01.2007 has been set WA NO. 467 OF 2021 - 4- aside as the respondent - petitioner, prior to Ext.P9 was allegedly drawing Rs.6100/- (Rupees Six thousand one hundred only) from 01.01.1997 to 31.12.2006 instead of Rs.4,274/- (Rupees Four thousand two hundred and seventy four only), by relying upon the Single Bench

judgment of this Court vide Ext.P5 dated 29.01.2003,

upheld by the Division Bench along with other connected matters vide judgment dated 01.10.2002 Ext.P6 and affirmed by the Honourable Supreme Court in Civil Appeal No.238-244-2004 vide judgment dated 10.02.2010 Ext.P7.

3. The facts in narrow compass are

enumerated hereinbelow: All the Central Government employees, on setting up of the Food Corporation of India (FCI) were given option to opt for the absorption in the service of FCI and benefits as per the provisions of Section 12A(4) of the Food Corporations Act, 1964 and other terminal benefits as applicable to the employees of the Central Government. It is pertinent to mention here that there WA NO. 467 OF 2021 -5- were two kinds of pay scales i.e., the Industrial Dearness Allowance (IDA) pattern pay scale drawn in the FCI and the Central Dearness Allowance (CDA) Pay scale of the Central Government. Most of the employees including the respondent - petitioner opted for the IDA pay scale on absorption and retirement benefits as CDA; accordingly not only the pay but pension were also to be revised. Thus, the question of pay revision as wells as the pension revision was taken up by the department and dispute arose as to whether the employees would be getting the pay revision and pension revision on the basis of CDA or on IDA and matter was taken up before this Court in O.P.No.12609 of 2000.

4. The learned Single Bench of this Court

vide judgment dated 29.01.2003 Ext.P5, allowed the writ petition filed by the Ex-employees of the FCI, being a covered matter in O.P.No.1642 of 1996 (Ext.P3) rendered by another Single Bench of this Court on 14.03.2000. The matter was taken up before the Division Bench in various writ appeals including the one against WA NO. 467 OF 2021 -6- the decision of the Single Bench in O.P.No.12609 of

2000. The writ appeal filed by the Union of India, was

dismissed by holding that once the employees of the Central Government had given option under clause 12A(4)(a),(b),(c) and opted the pattern of Central Government, they would be entitled to receive all benefits of Central Government employees and entitled to the pay revision and pension revision strictly as per the aforementioned Act.

5. The matter was taken up before the

Supreme Court in Civil Appeal No.238-224 of 2004 and vide judgment dated 10.02.2010 upheld the judgment of the Single Bench and the Division Bench by holding in paragraph No.13 that the Central Government did not have the jurisdiction to unilaterally alter or change the option exercised by the writ petitioners therein under Section 12A(4) (b) read with Section 12A(4C) of the FCI Act. Though in the judgment aforementioned, the provisions of Section 12A(4C) was also extracted but by upholding the reasoning given in the Single Bench, WA NO. 467 OF 2021 -7- dismissed the SLP by noticing in paragraph No.13, as above. In the aforementioned writ petition, Sri.P.M.Rockey, respondent-petitioner was one of the parties.

6. On analysis of the aforesaid judgments, Union

of India passed an order Ext.P9 dated 28.08.2012 which was challenged before the Single Bench in writ petition bearing No.22171 of 2012. The learned Single Bench vide impugned judgment relying upon the judgments of the previous Single Bench, subsequent Single Bench, Division Bench and honourable Supreme Court

allowed the writ petition by referring to the provisions of Section 12A (4)(a) and (b) read with section 12(4C) of the Act holding that the writ petitioner had opted for pensionary benefits applicable to the Central Government i.e., the pensionary benefits are payable under the CCS Pension Rules and what was available is the revised pension with Dearness Reliefs thereon as specified in the CCS Pension Rules. The relevant portion of the judgment dated 30.05.2019 reads as under: WA NO. 467 OF 2021 -8-

4.It is submitted by the learned counsel for the petitioner that the petitioner was initially appointed in the Food Department of the Union of India and had been absorbed in the service of the Food Corporation of India (FCI for short). It is stated that the rights of the employees, who were transferred to the FCI were governed by the provisions of the Food Corporation of India Act (the Act for short). It is stated that section 12A(4) of the Act specifically provided for exercise of options to be governed by the scale of pay applicable in the Government or the scale of pay applicable to the post under the FCI. A further option was provided for being governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government or the terminal benefits admissible to the employees of the Corporation. The petitioner had opted for scale of pay as applicable under the FCI and terminal benefits as applicable to employees of the Central

Government. This Court in Exhibit P3 judgment

specifically found that such option was completely in order, going by the terms of Section 12(4)(a) and (b) of the Act and that the said option being statutorily in character was liable to be accepted and acted upon by the respondents. Though the respondents have taken up the matter in appeal, Exhibit P6

judgment of the Apex Court was the result. In

the meanwhile, the petitioner and other similarly situated employees had approached this Court seeking release of terminal benefits and dearness relief on pension payable to them under the CCS pension Rules, 1972. It appears that it was aggrieved by the rejection of their claim for pension under the Pension Rules that they had approached this Court. The orders of rejection issued by the Government were

WA NO. 467 OF 2021 -9- quashed by this Court relying on Exhibit P3

judgment and the 2nd respondent was directed

to reconsider the claim of the petitioner in the light of the observations in Exhibit P3. It appears that the Union of India had taken up the matter before the Apex court by filing SLP as against Exhibit P6 judgment. Exhibit P7 was a well considered judgment issued considering the legal aspects of the matter. It was found that the option exercised by the employees being statutory in nature, even bipartite settlements which were entered into in the meanwhile would not affect such option exercised by them. It was found that the respondents were duty bound to honour the options exercised by the employees in terms of Section 12A(4)(a) and (b) read with section 12(4C) of the Act. It was found that the action of the Government in having revised/reduced the retirement benefits payable to the respondents unilaterally was completely without jurisdiction. The employees were, therefore, held to be entitled to pension and dearness relief under the CCS Pension Rules, 1972 in terms of the option exercised by them under Section 12A(4)

(a) and (b) read with section 12(4C) of the Act.

Exhibit P9 communication issued by the Additional 7th respondent proceeds on the basis that the petitioner, who retired from service of the FCI is not entitled to the pensionary benefits granted to him in terms of the CCS Pension Rules, 1972. It is stated that he is entitled only for IDA

dearness relief as applicable, since he had been given the benefits of the IDA wage revisions. It appears that the impact of Exhibits P3, P5, P6 and P7 judgments have not been considered by the respondents, even in a cursory manner, while issuing Exhibit P9 communication. The judgments referred to

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above specifically considered the legal issue and found that the option under Section 12A(4) is a dual option. The employees could have opted the pay scale applicable in the Central Government or the FCI under sub-clause (a) of the said Rule. There was a separate and distinct option available to opt for the retiral benefits applicable either to employees of the Central Government or those applicable to employees of the FCI. It is not in dispute before me that the petitioner is a person who had been opted for the pensionary benefits applicable to Central government employees, that is, the pensionary benefits as are payable under the CCS Pension Rules, 1972. In the above view of the matter, what is available to him is the revised pension with dearness relief thereon as specified in the CCS Pension Rules. The finding in Exhibit P9 to the effect that since the petitioner is an employee who had drawn the pay revision benefits and the variable DA applicable thereto, he cannot draw the pension and dearness relief as provided in the CCS Pension Rules is completely unsustainable and is at variance with the binding judgments of this Court in Exhibits P3, P5, P6 and P7.

5.The impugned order is, therefore, set aside. There will be a direction to the respondents to disburse the pensionary benefits to the petitioner in terms of his entitlement under the CCS Pension Rules. All arrears shall be calculated and continued to be disbursed to the petitioner as early as possible, at any rate, within a period of three months from the date of receipt of copy of this judgment

7. Mr.Krishna, learned Assistant Solicitor

WA NO. 467 OF 2021 -11- General (in charge) appearing on behalf of the appellants submits that in none of the aforementioned judgments, provisions of Section 12(4C) has been referred to in correct perspective and if looked into, it clearly says that the pension has to be calculated on the basis of last pay drawn under the IDA in the Corporation and accordingly, while calculating the pension, last pay drawn under the IDA is the reckoning pay and not the pay which the other Central Government employees were drawing. This

aspect has been considered in extenso vide judgment

dated 03.03.2016 in Writ Appeal No.1418 of 2015 by the Division Bench of this Court, wherein the judgment of the Single Bench of this Court in Writ Petition No.16338 of 2011 was set aside, with certain directions. The aforementioned judgment though was available at the time when the Single Bench passed the order herein, but for the reason best known could not be cited for effectual adjudication.

8. It was further contended that all the

previous judgments relied upon by the Single Bench do WA NO. 467 OF 2021 -12- pertain to the provisions of Section 12A(4) A,B,C and a direction has been issued to calculate the pension strictly as per the provisions of the Act, but has not read the contents of 12A(4C) meticulously, with humility, as Union of India had calculated the pension on the basis of the aforementioned provisions, whereas the pension has to be calculated on the basis of the last drawn pay.

9. It is settled law that the judgment of the

Division Bench has not been assailed before the Supreme Court, therefore, still holding the field and is not in contradiction to the other judgments which have referred to the same very provisions, but the expression last pay drawn has not been deliberated upon as it should have been in the manner and mode as has been done in Annexure A1 judgment. Therefore, the judgment under challenge is liable to be modified.

10. On the other hand, learned counsel

appearing on behalf of the respondent-petitioner countered the aforementioned submissions by do not denying the ratio decidendi culled out in the Annexure WA NO. 467 OF 2021 -13- A1 judgment but submitted that in all the previous round of litigations, the respondent writ petitioner was a party and therefore, judgment which was upheld up to the Supreme Court is inter-parte judgment, cannot be interdicted by relying upon the ratio decidendi culled out in Annexure A1 i.e., Writ Appeal No.1418 of 2015 decided on 03.03.2016 because finding of fact and law has been derived by giving a re-interpretation of the provisions of the FCI Act and urged this Court for dismissal of the intra-court appeal.

11. We have heard learned counsel for the parties and appraised the paper book.

12. We would be failing in duty in not extracting the relevant portion of the judgments in the previous round of litigation i.e., Exts.P5, P6 and P7. Ext.P5 judgment in O.P.No.12609 of 2000:

The petitioners are ex employees of the Food Corporation of India. Initially, they were employed in the Food Department of the Union of India. Later, they were absorbed in the Food Corporation of India. This Original Petition is filed claiming terminal benefits and dearness WA NO. 467 OF 2021 -14-

relief on pension applicable to them under the C.C.S. Pension Rule 1972. Their claim in this regard has been rejected by the Government by Exts.P9 to P14 orders. The point raised by the petitioners is covered in their favour by Ext.P7 judgment. The said judgment of a learned Single Judge has been affirmed by a Division Bench of this Court in W.A.No.2835/00 which is produced as Ext.P15. Therefore, the Original Petition is allowed Exts.P9 to P14 are quashed. The 2nd respondent is directed to reconsider the claim of the petitioners for terminal benefits including dearness relief on pension in accordance with law in the light of the observations made herein above within three months from the date of receipt of a copy of this

judgment and pay the amounts found due to

them without any further delay.

13. Operative part of the judgment of the

Division Bench dated 01.10.2002 in O.P.No.10692 of 1999 and connected matters is extracted hereinbelow. On perusal of the same, provisions of Section 12A (4) (a) and (b) have been extracted, but not (c).

.Admittedly the petitioners thereon opted to Central Government scheme and they had retired without receiving benefits as per Central Government pattern. The appellants herein contend that they will not get dearness reliefs as applicable to Central Government employees as at the time of retirement they were employees of Food Corporation of India. But as per Section 12A(4) in view of their option

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petitioners are entitled to get their terminal benefits admissible to Central Government employees. These employees were originally Government of India employees at the time of formation of Food Corporation of India. They Were given to right for option under clause 12A(4) (a) and (b) and they opted the pattern of Central Government and they are entitled to receive all the benefits of Central Government employees. Therefore, there are no reasons for discriminating them. These petitioners also will be entitled to get the benefits as they are treated as Central Government employees in view of the option exercised by them. We fully agree with the decision of Karnataka High Court and learned Single Judge. In view of the above decision there is no merit in the writ appeals and are dismissed.

14. In Ext.P7 judgment of the Honourable

Supreme Court, in paragraph No.4, provisions of 12A(4) and 4C has been extracted and in paragraph Nos.13 to 20, the findings arrived at, the same reads as under:

4. The Food Corporation of India (for short "the Corporation") was established under Section 3 of the Act. The services of the private respondents, who were then working under the Ministry of Food, Government of India were placed at the disposal of the Corporation. Section 12A was inserted in the Act by Amending Act No. 57/1968 to facilitate transfer of the government employees to the Corporation. Simultaneously, an opportunity was given to every transferred employee to opt

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for the scale of pay applicable to the post held

by him under the Government immediately before the date of transfer or the scale of pay applicable to the post under the Corporation to which he is transferred as also leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation. For the sake of convenient reference, Section 12A (1), (2), (4) and (4C) are reproduced below:-

12A. Special provisions for transfer of Government employees to the Corporation in certain cases - (1) Where the Central Government has ceased or ceases to perform any functions which under Section 13 are functions of the Corporation, it shall be lawful

for the Central Government to transfer, by order

and with effect from such date or dates (which may be either retrospective to any date not earlier than the 1st January, 1965, or prospective) as may be specified in the order, to the corporation any of the officers or employees serving in the Department of the Central Government dealing with food or any of its subordinate or attached offices and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or employee in such Department or office who has, in respect of the proposal of the Central Government to transfer such officer or employee to the Corporation, intimated within such time as may be specified in this behalf by that Government, his intention of not becoming an

WA NO. 467 OF 2021 -17- employee of the Corporation.

(2) In making an order under sub-section (1),

the Central Government shall, as far as may be, take into consideration the functions which the Central Government has ceased or ceases to perform and the areas in which such functions have been or are performed.

(4) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months' from the date of transfer, exercise his option in writing to be governed,-

(a) by the scale of pay applicable to the post

held by him under the Government immediately

before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred,

(b) by the leave, provident fund, retirement or

other terminal benefits admissible to employees of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations made by the Corporation under this act, and such option once exercised shall be final: Provided that the option exercised under clause

(a) shall be applicable only in respect of the post

to which such officer or employee is transferred to the Corporation and on appointment to a higher post under the Corporation, he shall be eligible only for the scale of pay applicable to such higher post: Provided further that if immediately before the date of his transfer any such officer or employee is officiating in a higher post under the Government either in a leave vacancy or in any WA NO. 467 OF 2021 -18-

other vacancy of a specified duration, his pay, on transfer, shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Department of the Ministry of the Central Government dealing with food or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Department or office subsequent to the transfer to the Corporation or any other officer or employee senior to him in that Department or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale

of pay applicable to the post he would have held

but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

(4C) Where an officer or other employee has

exercised an option under sub-section (4), or exercise, or is deemed to have exercised, an option under that sub-section, read with sub-section (4A) or sub-section (4B), to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefit shall be calculated on the basis of the pay and allowances drawn by him in the Corporation."

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13. Dehors the above conclusion, we are

convinced that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie, arbitrary, unreasonable and unjustified and the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/change the option exercised by the writ petitioners under Section 12A(4) (b) read with Section 12A(4C).

14. We may now advert to the bipartite

settlement on which reliance has been placed by the appellants to justify the directive given by the Central Government for adverse revision of the retiral dues payable to the respondents. Para 7.1 of the memorandum of settlement, the extracts of which has been placed before this Court in the form of Annexure R-4 read as under:

"Pension: In the case of Food Transferee employees who have opted Section 12-A of the Food Corporation Act, 1964 to be governed by the Pension Rules of the Central Government as amended from time to time, Pension shall be worked out

as under:

(i) For those retiring during the period 1 st

August 1983 to 30th March, 1985, employments for purposes of working out pension will be the pay in the revised scale. In the case of persons retiring prior to 31 st May, 1984 emoluments for the period prior to 1st August, 1983 shall be the emoluments which would have been taken into account for the purpose of pension as per the then existing orders.

(ii) For those retiring during the period 31st March, 1985 to 31 st December, 1985
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emoluments for purposes of pension will be pay in the revised scale and Industrial DA as admissible in FCI on 1st November, 1984. In the case of persons retiring prior to 31 st December, 1985 emoluments for the to period prior to 31st March, 1985 shall be the emoluments which would have been taken into account for the purpose of pension as at Senior (i) above.

(iii) For those retiring during the period 1 st

Jan., 1986 to 31st July, 1987 pension shall be worked out with reference to emoluments for purposes of pension as shown in Col.4 and Col.5 of Annexure 17 to 28 whichever is more. In the case of persons retiring prior to 31 st Oct., 1986 emoluments for the period prior to 1st Jan., 1986 shall be the emoluments which would have been taken into account for the purpose of pension as at Senior No. (ii) above."

15. A perusal of what has been reproduced

above makes it clear that the settlement was applicable to the employees retiring between 1.8.1983 and 31.7.1987. None of the private respondent

is shown to have retired during that period. Therefore, the terms of settlement cannot be invoked by the appellants to justify reduction of the retiral benefits payable to them.

16. A reading of the consequential order

dated 18.7.1990.

(Annexure R-6) issued by the Government of India does give an impression that the settlement is applicable to employees like the private respondents but, in our view, the same cannot be relied upon for the purpose of supporting the directive given for revising/reducing retiral benefits payable to the private respondents because the Central

WA NO. 467 OF 2021 -21- Government is not bestowed with the power to amend, alter or revise the terms of bipartite settlement.

17. Even if the memorandum of settlement is

held applicable to other employees of the

Corporation, the same cannot adversely affect the option exercised by the private respondents in terms of Secti 12A (4) (a) and (b) read with Section 12A (4C) of the Act. It has neither been suggested on behalf of the appellants nor it can be laid down as a proposition of law that the bipartite settlement arrived at between the Unions of the employees and the Management the Corporation could take away the right acquired by the respondents as a sequel to exercise of option in terms of Section 12A(4) (b).

18. The judgment on which reliance has been

placed by Shri Srivastava has no bearing on the issue raised in these appeals because in that case the Court was not called upon to decide whether the Central Government can pass an

order or issue a directive adversely affecting the

statutory option exercised by the employees.

19. In the result, the appeals are dismissed. Each of the private respondents shall get cost of Rs.10,000/- from the appellants.

20. Since the appeals have been dismissed,

the concerned authorities are directed to release the amount payable to the respondents and other similarly situated persons within period of three months from today, else they shall have to pay interest to @ 9% per annum from the date of this order.

15. On perusal of the observations in

paragraph No.14, no doubt it is clear that all the writ WA NO. 467 OF 2021 -22- petitioners therein were held entitled to the benefit under Section 12A (4)(b) read with Section 12A(4C).

16. The aforementioned provisions as noticed

above have been noticed in the judgment dated 03.03.2016 in writ appeal No.1418 of 2015 by the Division Bench wherein in paragraph No.24, it has been read as under: 24. According to the option exercised by the petitioner, he opted for pay scale of the Corporation under sub-clause (a) of subsection

(4) and opted for leave, provident fund,

retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the Rules and orders of the Central Government as amended from time to time under clause (b) of subsection (4). Sub- section (4-C), which is also relevant for the present case, is quoted below: (4-C) Where an officer or other employee has exercised an option under sub-section

(4) or exercises, or is deemed to have

exercised an option under that sub- section, read with sub-section (4-A) or sub- section (4-B) to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation.

Also, in paragraph No.25 it has been interpreted in the following manner. WA NO. 467 OF 2021 -23-

25. Sub-section (4-C) provides that, where an officer or employee has exercised an option under sub-section (4) to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation.

17. After noticing all the aforementioned

findings in paragraph No.29 learned Division Bench noticed that the IDA pay revision was effected after every five(5) years i.e., with effect from 01.08.1983 to 01.08.1987 and 01.02.1992 whereas the CDA pay scale was revised after every ten(10) years, thus, allowed the writ appeal in the following manner. 40. The Apex Court further held that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified and the learned Single Judge did not commit any error in setting aside the said exercise. The Apex Court further

held in paragraph (17) that the right acquired

by the respondents as a sequel to exercise of option in terms of Section 12A(4)(b) cannot be taken away by any bipartite settlement. Following was stated in paragraph (17): 17. Even if the memorandum of settlement is held applicable to other employees of the corporation, the same cannot adversely affect the option

exercised by the private respondents in terms of Section 12A(4)(a) and (b) read with Section 12A (4C) of the Act. It has neither been suggested on behalf of the appellants nor it can be laid down as a proposition of law that the bipartite settlement arrived at between the Unions of the employees and the Management of the Corporation could take away the right acquired by the respondents as a sequel to exercise of option in terms of Section 12A(4)(b).

41. From the above judgment also, it is clear

that the Apex Court upheld the order of the learned Single Judge on the ground that it adversely affected the petitioners, without giving opportunity to them and further the statutory option exercised under Section 12A(4) (b), cannot be diluted by any bipartite settlement. The judgments of this Court and the Apex Court are to the effect that the petitioners are entitled to all retiral benefits admissible to the Central Government employees, including the Central Dearness Relief (CDR).

42. Dearness Relief has been defined under

Rule 3(1)(cc) read with Rule 55A of the CCS(P) Rules. Rule 55A was inserted by Government of India by notification dated 22.1.1991 which was the relief granted on pension against price rise, at such rates and subject to such conditions as the Central Government may specify from time to time. Rule 55A is extracted below: 55-A. Dearness Relief on Pension/Family Pension

(i) Relief against price rise may be

granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time. (ii) If a pensioner is re-employed under the WA NO. 467 OF

2021 -25- Central or State Government or a Corporation/Company/ Body/ Bank under them in India or abroad including permanent absorption in such corporation/Company/Body/Bank, he shall not be eligible to draw Dearness Relief on pension/ family pension during the period of such re-employment.

43. Thus, the petitioners were entitled to CDR

and all other retiral benefits admissible to Central Government. They being exercised their option under Section 12A(4)(b) as observed above, all such benefits have to be computed on the basis of the salary drawn by them in the Corporation.

44. Now, we come to Exts.P9 and P10, which

were challenged in the writ petition. Ext.P10 is the order issued by the Government of India, Ministry of Food and Public Distribution, Pay and Accounts Office dated 18.5.2011 where instructions were issued to grant Central Dearness Relief from 1.2.1993 onwards and Central Dearness Relief @ 61%, 64%, 67% and 71% should be paid on the basic pension from 1.1.2004. It is true that the letter states the petitioner as IDA pensioner by stating IDA Revision with CDR as per Supreme Court's

order.

45. As observed above, the petitioner having

received the IDA pay scale, which was the last pay drawn at the time of his retirement in the Corporation, which pay scale is the basis for computation of all the benefits, the petitioner cannot be heard in saying that computation of retirement benefits should be made on the basis of corresponding pay scale of Central Government as admissible to employees who had drawn their last salary in the Central Government pay scale. Such interpretation is

WA NO. 467 OF 2021 -26- wholly misconceived and runs counter to the statutory scheme indicated in Section 12A(4-C), as discussed above.

46. The instructions given under Ext.P10,

after directing for revision of the petitioners, are as follows: Instructions 1. As per Supreme Court judgment Central DR has to be paid on pension and family pension. IDA DR already paid on SP/FP is to be adjusted against the Central DR to be paid from 01.02.1993 onwards to current date. Since 50% merger on pension as on 01.04.2004 is NOT applicable, Central DR @ 61%, 64%, 67% and 71% should be paid on basic pension from 01.01.2004 till 31.12.2005 respectively. 2.VI PCR benefits should not be allowed except Central DR.

3. There is No change in Commutation / DCRG due to this Updation.

47. The instructions further mention that 6 th

Central Pay Revision shall not be applicable to the petitioner except Central Dearness Relief. No exception can be taken to the said direction. Since as explained above, the petitioner is entitled for the benefit of revision under IDA pay scale which revision was made, if any, on the last drawn pay of the petitioner. The pay scale drawn by the Central Government employees were not relevant for the petitioner for computation of retiral benefits. We, thus, do not find any error in Exts.P9 and P10, and interference by the learned Single Judge was unwarranted. However, there cannot be any dispute that petitioner was entitled to receive all retiral benefits admissible to Central Government employees in accordance with the CCS(P) Rules and the orders issued by the Central Government from time to time.

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48. In the result, the judgment of the learned Single Judge deserves to be modified in the following manner: a)The direction of the learned Single Judge, in so far as it

set aside Exts.P9 and P10, is set aside.

b)The retiral benefits of the petitioner shall be computed as admissible to Central Government employees in accordance with the Central Civil Services (Pension) Rules, 1972 and the orders issued by the Central Government from time to time. The calculation of the retiral benefits of the petitioner shall be made on the basis of his last drawn pay in the Corporation i.e. IDA pay scale.

c)The writ petitioner shall be entitled for Central Dearness Relief and all other benefits as admissible to Central Government employees.

d)The petitioner is given an opportunity to represent against computation of pension in consequence to Exts.P9 and P10 raising objections which shall be considered and a decision be taken and communicated by the first respondent expeditiously, preferably within two months from the date, the representation is received.

18. Similar question is also now posed

against before us. We are of the view that, no doubt, all the employees of the FCI who have given an option as per the provisions of Section 12A of the Act would be governed by the same for the purpose of drawing the IDA WA NO. 467 OF 2021 - 28- in the FCI and CDA in the Central Government for the purpose of calculating pension, but if looked deeply 4C of

Section 12A, reproduced in the judgment

aforementioned, leaves no manner of doubt that it has to be as per the last pay drawn.

19. For the sake of brevity 4C of 12A is extracted again:

(4C) Where an officer or other employee has exercised an option under sub-section (4), or exercise, or is deemed to have exercised, an option under that sub-section, read with sub-section (4A) or sub-section (4B), to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefit shall be calculated on the basis of the pay and allowances drawn by him in the Corporation."

20. The expression pay and allowances

drawn by him in the Corporation is the barometer for the purpose of determination of the pension under the CDA pay scale. This is precisely what has been done in Ext.P9. In none of the judgments noticed by the Single WA NO. 467 OF 2021 -29- Bench it has been held that the employees would not be entitled to the benefits of 12(4C). For the sake of repetition the expression pay and allowances is the criteria to be followed for assessing the pension under the CDA. If 4C is omitted and the claim of the writ petitioner is accepted it would amount to rewriting of 4C much less assessment of the pay revision on the basis of the pay and allowances drawn by the Central Government employees, which will be wholly preposterous and aberrative. This aspect, in our considered view, has not been noticed by the learned Single Bench while allowing the writ petition. We thus, modify the judgment of the Single Bench in the similar lines as has been done in Annexure A1 by giving directions to the appellants-Union of India which are extracted hereinbelow:

48. In the result, the judgment of the learned Single Judge deserves to be modified in the following manner: a)The direction of the learned Single Judge, in so far as it set aside Exts.P9 and P10, is set aside. WA NO. 467 OF 2021 -30-

b)The retiral benefits of the petitioner shall be computed as admissible to Central Government employees in accordance with the Central Civil Services (Pension) Rules, 1972 and the orders issued by the Central Government from time to time. The calculation of the retiral benefits of

the petitioner shall be made on the basis of his last drawn pay in the Corporation i.e. IDA pay scale.

c)The writ petitioner shall be entitled for Central Dearness Relief and all other benefits as admissible to Central Government employees.

d)The petitioner is given an opportunity to represent against computation of pension in consequence to Exts.P9 and P10 raising objections which shall be considered and a decision be taken and communicated by the first respondent expeditiously, preferably within two months from the date, the representation is received.

21. The retirement benefits of the

respondent-petitioner and all similar employees shall be computed as admissible to the Central Government Employees in accordance with the Central Civil Services (Pension) Rules, 1972 and the orders issued by the Central Government from time to time, and the calculation of the retirement benefits of the writ petitioner shall be made on the basis of his last drawn WA NO. 467 OF 2021 -31- pay in the Cooperation i.e., IDA pay scale. The respondent writ petitioner shall also be entitled to Central Dearness Reliefs and all other benefits as admissible to Central Government Employees. Before doing that, opportunity will be given to the respondent writ petitioner for raising the objections which though have not been taken notice in either of the judgments by us. Writ appeal stands disposed of in the aforementioned terms . Sd/- AMIT RAWAL JUDGE Sd/- K. V. JAYAKUMAR JUDGE vv

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