

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

O.A. No. 270/2010

With

O.A. No. 24/2010

Sq. Ldr. Vinod Kumar Jain & OthersApplicant

Versus

Union of India & OthersRespondents

[With Lt. Cdr. Avtar Singh & Ors. Vs. Union of India & Ors.]

For applicant: Cmde (Retd.) Sukhjinder Singh, Advocate.

For respondents: Ms. Jyoti Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

14.09.2010

1. Both the cases involve identical question of law one from the Navy and other from the Air Force, therefore, they are disposed by the common order.

2. In the case of Sq. Ldr. Vinod Kumar Jain, this petition has been filed by Sq. Ldr. Vinod Kumar Jain along with other applicants having equivalent ranks i.e. Major from the Army and

some of the Lt. Commanders from the Navy who have since retired. In the case of Lt. Cdr. Avtar Singh, a joint petition has been filed by all the retired Lt. Commanders of the Navy. Both these petitions are espousing the case of officers of equivalent ranks from all three Forces i.e. Army, Air Force and Navy i.e. Majors in the Indian Army, Sqn. Leaders from Air Force and Lt. Commanders from Navy. The grievance in both the petitions is with regard of pension. The Sixth Pay Commission came into force w.e.f. 01.01.2006 and in implementation of that Ministry of Defence has passed various orders from time to time. The issue before us is limited one that how the persons of these rank and other equivalent rank in the other forces should be fixed in the Sixth Pay Commission. Joint grievance of all the petitioners is that their fixation has not been done in accordance with the recommendation of the Sixth Pay Commission and the implementation order issued by the Ministry of Defence from time to time. It has been prayed that the letter issued by the Ministry of Defence dated 03rd October, 2008 and Government of India's letter dated 11th November, 2008 may be quashed to the extent of methodology on fixation of pension of pre 2006 retirees and has further sought a relief that respondents may be directed to amend

para 4.2 of OM dated 01.09.2008 as per its wording reproduced in OM dated 03rd October, 2008 and direct the respondents for fixation of pension in terms of the judgment given in the case of Union of India SPS Vains – 2008 (12) SCALE 360.

3. The first order in sequence of is dated 01.09.2008 by which the Ministry of Defence has implemented the Government decision on the recommendations of the Sixth Pay Commission and the revision of the pension of the pre 2006 pensioners and family pensioners etc. which reads as under :-

*“F. No. 38/37/08-P&PW (A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners’ Welfare
Lok Nayak Bhawan, New Delhi
Dated the 01st September, 2008*

OFFICE MEMORANDUM

Sub: Implementation of Government’s decision on the recommendations of the Sixth Central Pay Commission – Revision of pension of pre-2006 pensioners/family pensioners etc.

1. The undersigned is directed to say that in pursuance of Government’s decision on the recommendations of Sixth Central Pay Commission, sanction of the President is hereby accorded to the regulation, with effect from 1.1.2006, of pension/family pension of all the pre-2006 pensioners/family pensioners in the manner indicated in the succeeding

paragraphs. Separate orders will be issued in respect of employees who retired/died on or after 1.1.2006.

2.1 These orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) rules, 1972, CCS (Extraordinary Pension) rules and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973.

2.2 Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

2.3 These orders do not also apply to retired High Court and Supreme Court Judges and other Constitutional/Statutory Authorities whose pension etc. is governed by separate rules/orders.

3.1 In these orders:

- a. Existing pensioner or Existing Family pensioner means a pensioner who was drawing/entitled to pension/family pension on 31.12.2005.*
- b. Existing pension means the basic pension inclusive of commuted portion, if any, due on 31.12.2005. It covers all classes of pension under the CCS (Pension) rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.*
- c. Existing family pension means the basic family pension drawn on 31.12.2005 under the CCS (Pension) Rules and the corresponding rules applicable to Railway employees and the Members of All India Services.*

4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-

- i. The existing pension/family pension.*
- ii. Dearness Pension, where applicable*

- iii. *Dearness Relief upto AICPI (IW) average index 536 (Base year 1982=100) I.E. @ 24% OF Basic Pension/Basic family pension plus dearness pension as admissible vide this Department's O.M. No.42/2/2006-P&PW (G) dated 5.4.2006.*
- iv. *Fitment weightage @ 40% of the existing pension/family pension.*

Where the existing pension in (i) above includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006.

4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent 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. In the case of HAG+ and above scale, this will be fifty percent of the minimum of the revised pay scale.

4.3 Since the consolidate pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

4.4 The upper ceiling on pension/family pension laid down in the Department of Pension and Pensioner's Welfare Office Memorandum No. 45/86/97-P&PW (A) (Part-I) dated 27.10.1997 has been increased from Rs.15000/- and Rs.9000 to 50% and 30% respectively of the highest pay in the Government (the highest pay in the Government is Rs.90,000 since 1.1.2006)

4.5 The quantum of pension/family pension available to the old pensioners/family pensioners shall be increased as follows:-

<u>Age of pensioner/family pensioner</u>	<u>Additional quantum of pension</u>
From 80 years to less than 85	20% of revised basic

<i>years.</i>	<i>pension/family pension.</i>
<i>From 85 years to less than 90 years.</i>	<i>30% of revised basic pension/family pension.</i>
<i>From 90 years to less than 95 years.</i>	<i>40% of revised basic pension/family pension.</i>
<i>From 95 years to less than 100 years.</i>	<i>50% of revised basic pension/family pension.</i>
<i>100 years or more</i>	<i>100% of revised basic pension/family pension</i>

The amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and his/her consolidated pension in terms para 4.1 and 4.2 above is Rs.10,000 pm, the pension will be shown as (i) Basic pension = Rs.10,000 and (ii) Additional pension = 2000 pm. The pension on his/her attaining the age of 85 years will be shown as (i) Basic Pension = Rs.10,000 and (ii) additional pension = Rs.3,000 pm.

4.6 Some of the existing pensioners who retired between 31.3.1985 and 31.12.1985 are in receipt of personal pension. The said personal pension will continue to be granted as a separate element and will not be merged into the pension as consolidated above.

4.7 Since the consolidated pension/family pension arrived at as per paragraph 4.1. includes dearness relief upto average index level 536 (Base year 1982=100) in accordance with the revised scheme of dearness relief for which orders are being issued separately. The four instalments of dearness relief sanctioned earlier from 1.7.2006, 1.7.2007 and 1.1.2008 in this Department's Office Memorandum No. 42/2/2006-P&PW (G) dated the 15.9.2006, Office Memorandum No. 42/2/2006-P&PW (G) dated 23.3.2007, Office Memorandum No. 42/2/2006-P&PW (G) dated the 18.9.2007 and Office Memorandum No. 42/2/2006-P&PW dated the 19.3.2008 respectively shall be adjusted against revised Dearness Relief becoming due on the consolidated pension/family pension.

5.1 Where the consolidated pension/family in terms of paragraph 4 above works out to an amount less than Rs.3500/- the same shall be stepped upto Rs.3500/-. This will be regarded as pension/family pension with effect from 1.1.2006. In the case of pensioners who are in receipt of more than one pension, the floor ceiling of Rs.3500/- will apply to the total of all pensions taken together.

5.2 Where the disability pension under the CCS (EOP) Rules, is drawn in addition to invalid pension under the CCS (Pension) rules, 1972, the minimum limit of Rs.3500 will apply to total of two pensions as indicated in paragraph 5.1. Where the disability pensions drawn in isolation, the minimum limit of Rs.3500/-will apply for 100% disability. For lesser degree of disability the minimum limit will be proportionately less.

6. The employed/re-employed pensioners/family pensioners are not getting dearness relief on pension at present under the extant orders. In their case the notional dearness relief which would have been admissible to them but for their employment/re-employment will be taken into account for consolidation of their pension in terms of paragraph 4.1 above as if they were drawing the dearness relief. Their pay will be re-fixed w.e.f. 1.1.2006 with reference to consolidated pension becoming admissible to them. Dearness relief beyond 1.1.2006 will, however, not be admissible to them during the period of employment/reemployment.

7. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:-

(a) PENSION

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be updated in terms of these orders. In cases where the Government servants have drawn one time lump sum terminal benefits equal to 100% of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per Supreme Court

judgment dated 15.12.1995, their cases will not be covered by these orders.

(b) FAMILY PENSION

In cases where, on permanent absorption in public sector undertaking/autonomous bodies, the terms of absorption permit grant of family pension under the CCS (Pension) rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Service, the family pension being drawn by family pensioners will be updated in accordance with these orders.

*8. All Pension Disbursing Authorities including Public Sector Banks handling disbursement of pension to the Central Government pensioners are hereby authorised to pay pension/family pension to existing pensioners/family pensioners at the consolidated rates in terms of para 4.1 above without any further authorisation from the concerned Accounts Officers/Head of Office etc. A table indicating the existing basic pension/family pension without Dearness Pension, the basic pension/family pension with dearness pension and the revised consolidated pension/family pension is enclosed for ready reference. **(Annexure I)**. This table may be used where the pensioner is in receipt of a single pension only. Where a pensioner is in receipt of more than one pension, consolidation may be done separately in terms of paragraph 4.1 and as indicated in paragraph 5 floor ceiling of Rs.3500/- may be applied to total pension from all sources taken together. Wherever the age of pensioner/family pensioner is available on the pension payment order, the additional pension/family pension in terms of para 4.5 above may also be paid by the pension disbursing authorities immediately without any further authorisation from the concerned Account Officer/Head of Office, etc. A suitable entry regarding the revised consolidated pension shall be recorded by the pension Disbursing Authorities in both halves of the Pension Payment Order. An intimation regarding disbursement of revised pension may be sent by the pension disbursing authorities to the office of CPAO and Accounts Officer which had issued the PPO in the form given at **Annexure-II** so that the latter can update the Pension*

payment Order Register maintained by him. An acknowledgement shall be obtained by the Pension Disbursing Authorities from Office of CPAO and the respective Accounts Officers in this behalf.

9. *The consolidated pension/family pension as worked out in accordance with provisions of para 4.1 above shall be treated as final 'Basic Pension' with effect from 1.1.2006 and shall qualify for grant of Dearness Relief sanctioned thereafter.*

10. *40% of the arrears of pension will be paid in the year 2008-09 and the remaining 60% in the year 2009-10.*

11. *It shall be the responsibility of the Head of the Department of the Ministry, Department, Office, etc. from which the government servant had retired or where he was working prior to his demise to revise the pension/family pension of all pensioners/family pensioners with effect from 1st January 2006 in accordance with the provisions mentioned in para 4.1 and 4.2 above and to issue revised Pension Payment Order (PPOs). Action to revise pension/family pension in terms of these provisions shall be initiated suo moto by the concerned Heads of Departments. In the case of the Defence Civilian Employees, however, the procedure prescribed in this regard by the Ministry of Defence shall be followed. It is emphasised that the Pension Sanctioning Authority, in no case, will ask the pensioner/family pensioners to surrender his/her original Pension Payment Order (PPO) for issuing revised authority. In case, however, the age of pensioner/family pensioner is not available on the PPO/office records, the same shall be obtained from the pensioner/family pensioner and indicated in the revised PPO. The authenticity of the age declared by the pensioner/family pensioner shall be verified by the pension sanctioning authority. It may also be ensured that a copy of the revised PPO should be invariably endorsed to the pensioner/family pensioner.*

12. *It is considered desirable that the benefit of these orders should reach the pensioners as expeditiously as possible. To achieve this objective it is desired that all Pension Disbursing Authorities should ensure that the revised*

pension and the first instalment of arrears due to the pensioners in terms of para 4.1 and para 4.5 above is paid to the pensioners or credit to their account by 30th September, 2008 or before positively. Instructions regarding release of second instalment of arrears will be issued later. Concerted efforts should be made by all the authorities concerned to ensure that the revised PPO's are issued, wherever necessary, with the utmost expedition in terms of para 4.1, 4.2 and 4.5 above and arrears are paid in terms of para 10 above within two months from the date of issue of this O.M.

13. *In their application to the persons belonging to Indian Audit and Accounts Department these orders issue in consultation with the Comptroller and Auditor General of India.*

14. *Ministry of Agriculture etc. are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and subordinate Offices under them on a top priority basis. All pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners.*

15. *Hindi version will follow.*

Sd/-

(Rajni Razdan)

Secretary to the Government of India

To

All Ministries/Department of Government of India

Copy to : as per mailing list."

4. The highlight of this order is that a separate order will be issued by the Ministry of Defence with regard to Armed Forces pensioners and family pensioners. The guideline was given in para 4.1 that the pension and family pension of existing pre-2006

pensioners and family pensioners will be consolidated with effect from 01.01.2006 by adding together existing pension, family pension, dearness pension where applicable, dearness relief, fitment weightage @ 40% of the existing pension and family pension. Para 4.2 further says 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. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale. Thereafter, on 03rd October, 2008 certain clarifications have been issued. It says that in pursuance to the Government decision on recommendations of the Sixth Pay Commission, sanction of the President was accorded to the regulation with effect from 01.01.2006, of pension and family pension of all the pre-2006 pensioners and family pensioners in the manner indicated in the order dated 01.09.2008. A number of references has been received seeking clarifications, therefore, a consolidated clarification was given to all the queries which have arisen. Order of 03rd October, 2008 reads as under :-

"F. No. 38/37/08-P&PW (A). Pt. 1

Government of India
 Ministry of Personnel, Public Grievances & Pensions
 Department of Pension & Pensioners' Welfare
 Lok Nayak Bhawan, New Delhi

Dated the 3rd October, 2008

OFFICE MEMORANDUM

Sub: Implementation of Government's decision on the recommendations of the Sixth Central Pay Commission – Revision of pension of pre-2006 pensioners/family pensioners etc.

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, sanction of the President is hereby accorded to the regulation, with effect from 1.1.2006, of pension/family pension of all the pre-2006 pensioners/family pensioners in the manner indicated in this Department's O.M. No. 38/37/08-P&PW (A) dated 1.9.2008. A number of references are being received in this Department seeking clarification in regard to various provisions of the aforesaid O.M. the matter has been considered in consultation with the Ministry of Finance, Department of Expenditure and the following clarifications/modifications are made in regard to the aforesaid O.M. dated 1.9.2008:

Provision in the OM No. 38/37/08-P&PW (A) dated 1.9.2008	Clarification/modification
3.1 In these orders: a. Existing pensioner or Existing Family pensioner means a pensioners who was drawing/entitled to pension/family pension on 31.12.2005. b. Existing pension means the basic pension inclusive of commuted portion, if any, due on	The 'existing pensioner or existing family pensioner' would include a pensioner/family pensioner who became entitled to pension/family pension w.e.f. 1.1.2006 consequent on retirement/death of Government servant on 31.12.2005. Similarly, 'existing pension or

<p>31.12.2005. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.</p> <p>c. Existing family pension means the basic family pension drawn on 31.12.2005 under the CCS (Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.</p>	<p>existing family pension' would include a pension/family pension which became due w.e.f. 1.1.2006 consequent on retirement/death of Government servant on 31.12.2005.</p>
<p>4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired.</p>	<p>The pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37,400-67000 and the corresponding grade pay being Rs.10,000 p.m., his minimum guaranteed pension would be 50% of Rs.37,400+ Rs.10,000 (i.e. Rs.23,700). A statement indicating the minimum pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure.</p> <p>The pension will be reduced pro-rata, where the pensioner</p>

	<p>had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs.3500/- p.m.</p> <p>In case the pension consolidated as per para 4.1 of O.M. No. 38/37/08-P&PW (A) dated 1.9.2008 is higher than the pension calculated in the manner indicated above, the same (higher consolidated pension) will be treated as Basic Pension.</p> <p>The fixation of family pension will be subject to the provision that the revised family pension, in no case, shall be lower than thirty per cent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the pensioner/deceased Government servant had last worked. In case the family pension consolidated as per para 4.1 of OM No. 38/37/08-P&PW (A) dated 1.9.2008 is higher than the family pension calculated in the manner indicated above, the same (higher consolidated family pension) will be treated as Basic family Pension.</p>
4.5 The quantum of family pension of family pension available to the	(i) The additional quantum of pension/family pension, on

old pensioners/ shall be increased	family pensioners as follows	attaining the age of 80 years and above, would be admissible from the 1 st day of the month in which date of birth falls. For example, if a pensioner/family pensioner completes age of 80 years on any date in the month of August, 2008, he will be entitled to additional pension/family pension w.e.f. 1.8.2008. those pensioners/family pensioners whose date of birth is 1 st August, will also be entitled to additional pension/family pension w.e.f. 1.8.2008 on attaining the age of 80 years and above.
<u>Age of pensioner/Family pensioner</u>	<u>Additional quantum of pension</u>	
From 80 years to less than 85 years	20% of revised basic pension/family pension	
From 85 years to less than 90 years	30% of revised basic pension/family pension	
From 90 years to less than 95 years	40% of revised basic pension/family pension	
From 95 years to less than 100 years	50% of revised basic pension/family pension	
100 years or more	100% of the revised basic pension/family pension	

5. Thereafter on 11.011.2008, Ministry of Defence has issued the order for implementation of the Government decision on the recommendations of the Sixth Pay Commission - Revision of pension of Pre 2006 Armed Forces Pensioners/Family Pensioners. The relevant portion of the said order reads as under:-

“2. **Applicability**

2.1 *These orders shall apply to all the Armed Forces Pensioners/Family Pensioners who were drawing*

pension/family Pension as on 1.1.2006 under the Pension Regulations of the three Services/State Forces and various Government orders issued from time to time.

2.2. *The provisions of this letter do not apply to the following categories :*

(i) *Gallantry awardees drawing monetary allowance attached to the award, such as Param Vir Chakra, Ashok Chakra, etc.*

(ii) *UK/HKSRA Pensioners.*

(iii) *Persons in receipt of Compassionate Allowance, Guzara, Reservist allowance or any other allowance on which dearness relief is not admissible.*

(iv) *Reservists in receipt of Exgratia payment at Rs.600/- per month covered by Govt. of India, Ministry of Defence letter No. B/39042/AG/PS-4 (a&c)/1331/C/D (Pen/Sers) dated 29th Dec 2000.*

(v) *Families of the deceased reservists in receipt of Ex-gratia family pension at Rs.605/- per month covered by Govt. of India, Ministry of Defence letter No. B/40029/AG/PS-4 (d)/1/B/D (Pension/Services) dated 7.1.1999.*

(Separate orders will be issued in respect of (iv) and (v) above)

3. Definitions

(a) *'Existing Pensioner' or 'Existing Family Pensioner' means a pensioner who was entitled to/drawing pension/family pension on 31.12.2005. This will also include a pensioner/family pensioner who became entitled to pension/family pension with effect from 1.1.2006 consequent upon retirement/discharge/death of Armed Force personnel on 31.12.2005. For the purpose of family pension, it also covers members of family to those who retired/discharged prior to 1.1.2006 and in whose case*

family pension had not commenced as the pensioner was alive on 31.12.2005.

(b) 'Existing Pension' means the basic pension exclusive of Dearness Pension but inclusive of commuted portion of pension, if any due on 31.12.2005 and covers all kinds of pension viz. Retiring/service/special/reservist/invalid/disability/liberalised disability and war injury pension. This will also include pension/family pension, which became due with effect from 1.1.2006 consequent on retirement/discharge/death of a Armed force personnel on 31.12.2005.

In the case of PBOR under the three services, the 'Existing Pension' would mean the revised pension fixed as on 1.1.2006 in terms of the provisions contained in this Ministry's letter No. 14 (3)/2004-D (Pen/Sers)/Vol-III dated 1.2.2006 and No. 14 (3)/2004-D (Pen/Sers) Col-V dated 2.5.2006. This also includes additional pension sanctioned to Havildar granted Honorary Rank of Naib Subedar. It will, however, not include Adhoc Ex-gratia payment, if any.

(c) 'Existing Family Pension' means the basic family pension drawn on 31.12.2005 exclusive of Dearness pension under the Pension Regulations of the three Services/State forces and other orders issued on the subject from time to time. It also covers Liberalised and Special Family Pension and Dependent Pension sanctioned in battle and non-battle casualty cases.

(d) 'Existing Dearness Relief' means the dearness relief due to pensioners/family pensioners upto average AICPI (IW) 536 (Base year 1982=100) as on 1.1.2006 at the rate of 24% of Basic Pension/Basic Family pension plus Dearness pension as admissible vide Government of India, Ministry of Personnel Public Grievances and Pension, Department of Pension and Pensioners' Welfare Office Memorandum No. 42/2/2006-P&PW (G) dated 5.4.2006.

(e) 'Dearness Pension' means Dearness Pension as admissible vide Ministry of Finance, Deptt. Of expenditure OM No. 105/1/2004/IC dated 01.03.2004.

(f) 'Pension Disbursing Agency' (PDA) means Treasury, Post Office, Pay and Accounts Office, Defence Pension Disbursing Office (DPDO), Indian Embassy Nepal and authorised Public/Private Sector Banks.

(g) 'Pension Sanctioning Authority' (PSA) means PCDA (Pension) Allahabad, PCDA (Navy) Mumbai and CDA (AF) Delhi as the case may be.

4. Consolidation of Pension

4.1 The Pension/Family Pension of existing Pre-1.1.2006 pensioners/family pensioners will be consolidate with effect from 1.1.2006 by adding together:

(i) The Existing Pension (including commuted portion of pension, if any)/Existing Family Pension

(ii) Dearness Pension, if any, as applicable from 1.4.2004 to those retired/died prior to 1.4.2004.

(iii) Dearness Relief upto AI CPI (IW) 536 i.e. 24% of basic pension/family pension plus dearness pension.

(iv) Fitment weightage @ 40% of the Existing Pension/Existing Family Pension. Where the amount of fitment weightage works out in fraction of a rupee, it will be rounded off to the next higher rupee.

NOTE : Where the Existing Pension/Existing Family Pension includes the effect of merger of 50% of Dearness Pay in respect of those retired/died on or after 1.4.2004, the existing pension/family pension for the purpose of fitment weightage will be re-calculated after excluding the merged Dearness Pay of 50% from emoluments for computation of existing pension/existing family pension. This will be in line with the definition of "Existing Pension" and "Existing Family Pension" given in Para 3 of these orders.

4.2 The amount so arrived at in terms of Para 4.1 above will be regarded as consolidated pension/family pension with effect from 1.1.2006. **Since the consolidated pension will be inclusive of commuted portion of pension, if any, the amount of pension commuted will be deducted from the said amount while making monthly disbursements.**

5. The consolidation of pension will further be subject to the provision that the consolidated pension, in no case shall be lower than fifty per cent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre revised scale from which the pensioner had retired/discharged including Military Service Pay and 'X' Group pay where applicable. For example, if a pensioner had retired in the pre-revised scale of pay 6600 – 170 – 9320, the corresponding pay band being 9300 – 34800 and the corresponding grade pay the Military Service Pay being Rs.4,600/- and Rs. 2,000 respectively, his minimum guaranteed pension would be 50% of Rs. 9300 + Rs.4600 + 2000 i.e. Rs.7,950 for 33 years of qualifying service. The pension so calculated will be reduced pro-rata, where the pensioner had less than the maximum required service of 33 years for full pension and in no case it will be less than Rs.3,500/-. In case the pension consolidated as per Para 4.1 above is higher than the pension calculated in the manner indicated above, the same (higher consolidated pension) will be treated as Basic Pension with effect from 1.1.2006.

The consolidation of family pension will be subject to the provision that the consolidated family pension, in no case, shall be lower than thirty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the petitioner/deceased Armed Force personnel had retired/died including Military Service Pay and 'X' Group pay where applicable. In case the family pension consolidated as per Para 4.1 above is higher than the family pension calculated in the manner indicated above, the same (higher consolidated family pension) will be treated as Basic family pension with effect from 1.1.2006.”

6. Ministry of Defence also issued another order dated 30th August, 2008 reiterating same recommendations and implementation in consequent thereof and there is Anneuxre-I Part B, para 5.1.46 and 5.1.47 which are relevant for our purpose reads as under :-

“Past pensioners - analysis of changes made in the past and recommendations - 5.1.46 The main demands of past pensioners related to grant of one rank one pension both for civilian as well as Defence Forces retirees and better medical facilities. In case of Defence Forces, the issue of one rank one pension was conceded partially when one time increase was granted to Defence Forces pensioners in 1992 that reduced the gap between past and present pensioners in Forces. The Fifth CPC extended full parity between pre and post 1/1/1986 pensioners and a modified parity between pre and post 1/1/1996 pensioners. In modified parity, it was provided that pension could, in no case, be less than 50% of the minimum of the corresponding Fifth CPC revised pay scale from which the pensioner had retired.

Fitment benefit to the past pensioners - 5.1.47 The Commission notes that modified parity has already been conceded between pre and post 1/1/1996 pensioners. Further, full neutralisation of price rise on or after 1/1/1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. However, in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommends that all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness

pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. A table (Annexure 5.1.1.) showing fixation of the pension of the existing pensioners in the revised dispensation consequent to implementation of the recommendations of this Commission has been prepared and should be used for fixing the revised pension of the existing pensioners. The fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table.”

Para 5.1.46 says that the main demands of past pensioners related to grant of one rank one pension both for civilian as well as Defence Forces retirees and better medical facilities. In case of Defence Forces, the issue of one rank one pension was conceded partially when one time increase was granted to Defence Forces pensioners in 1992 that reduced the gap between past and present pensioners in Forces. The Fifth Central Pay Commission extended full parity between pre and post 01.01.1986 pensioners and a modified parity between pre and post 01.01.1996 pensioners. In modified parity, it was provided that pension could,

in no case, be less than 50% of the minimum of the corresponding Fifth CPC revised pay scale from which the pensioner had retired. Para 5.1.47 says that the Commission notes that modified parity has already been conceded between pre and post 01.01.1996 pensioners. Further, full neutralisation of price rise on or after 01.01.1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. That shows that the norms which was accepted in the Fifth Pay Commission has also been adopted under the Sixth Pay Commission, therefore, there is no distinction between pre and post 01.01.1996 retirees. It further says that in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommended that all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance and dearness etc. It further clarifies which is relevant and crucial in the matter that the fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and

the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. To this extent, a change would be need to be allowed from the fitment shown in the fitment table. The expression “the minimum” of pay in the pay band is crucial in this case.

7. Learned counsel for the applicant has emphasised that the minimum of the pay in the pay band for the equivalent rank should be taken into consideration for determination of the pension of the retirees. This is not contested by learned counsel for the respondents. In this connection, our attention was also invited to the Special Navy Instructions which was issued on 18th October, 2008 and the extract of these Navy Instructions reads as under :-

“SPECIAL NAVY INSTRUCTIONS

No. 2/S/08 New Delhi 18th day of October, 2008

2/S/08 REVISION OF PAY SCALES, FIXATON OF INITIAL PAY IN THE REVISED PAY BANDS, GRADE PAY AND MILITARY SERVICE PAY, REGULATIONS OF PAY ON PROMOTION – FOR OFFICERS OF ALL BRANCHES AND MIDSHIPMEN/CADETS OF THE NAVY (EXCLUDING MEDICAL AND DENTIAL BRANCHES) CONSEQUENT UPON THE IMPLEMENTATON OF THE DECISON OF THE GOVERNMENT WITH RESPECT OT

**THE RECOMMENDATION OF THE SIXTH CENTRAL
PAY COMMISSION.**

SECTION I – GENERAL

1. In pursuance of the recommendations of the Sixth Central Pay Commission and the Government decision thereon, the existing scales of pay admissible to naval Officers will be revised with effect from 01 January, 2006 and pay fixed in the revised pay bands, grade pay and Military Service Pay in accordance with the provisions of this Instruction. The provisions of this Navy Instruction will apply to all officers including Special Duties List and Midshipmen/Cadets who were on the effective strength of the Navy as on 01 Jan 2006 and those who join the Navy thereafter and to under trainee officers who were undergoing pre-commission training on 01 January 2006 and to trainee officers who join after that date.”

In these Navy Instructions, Rule 3 is definition clause and in Definition Clause pay in the pay band has been described as under :-

*“3.(e) **“Pay in the pay band”** means the pay drawn in the running pay bands specified in Column 6 of Table given at para 4 (a) below.*

*(f) **“Grade Pay”** is the fixed amount corresponding to a pre-revised pay scale/rank as specified in col 7 of table at para 4 (a) below.*

This definition Clause says that the pay in the pay band means pay drawn in running pay and grade pay is the fixed amount corresponding to a pre-revised pay scale/rank as specified in column 7 of table at para 4 (a) below. This table reads as under :-

Revised Pay Structure							
Corresponding							
S. N.	Rank	Existing		Pay Band/ Scale	Pay Bands/Scales	GP	MSP
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Sub Lt.	8250-300-10050	0	PB-3	15600-39100	5400	6000
2.	Lieutenant	9600-300-11400	400	PB-3	15600-39100	6100	6000
3.	Lieutenant Commander	11600-325-14850	1200	PB-3	15600-39100	6600	6000
4.	Commander	13500-400-17100	1600	PB-3	15600-39100	7600	6000
5.	Captain (with less than three years service in the rank)	15100-450-17350	2000	PB-4	37400-67000	8700	6000
6.	Captain (with 3 yrs or more service in the rank)/Comm.	16700-450-18050	2400	PB-4	37400-67000	8900	6000
7.	Rear Admiral	18400-500-22400	-	PB-4	37400-67000	10000	NIL
8.	Vice Admiral	22400-525-24500	-	PB-4	37400-67000	12000	NIL
9.	VCNS/FOC-in-Cs of Naval Commands	26000	-	Apex Scale	80,000 (fixed)	NIL	NIL
10.	Chief of the Naval Staff	30,000	-	Chief of Naval Staff	90000 (fixed)	NIL	NIL

8. In this revised pay structure according to the applicant the basic pay of in pre revised scale for the rank of Lt. Commander and equivalent rank was Rs.11,600/- and rank pay was 1200 x 1.86 and Rs. 23,810/- has been worked out as minimum pay in the pay band for the rank of Lt. Commander in the Sixth Pay Commission. Therefore, contention of learned

counsel for the applicant is that this is the pay in the pay band of this revised pay scale for Lt. Commander and learned counsel for the applicant submitted that the expression used in the implementation order and in the recommendations of the Sixth Pay Commission is that incumbent shall get 50% of the minimum of the pay in the pay band. Therefore, learned counsel for the applicant submits that Rs.23810/- is the minimum pay in the pay band for Lt. Commander and it should be taken up for consideration of the pension of the pre retirees. Learned counsel for the applicant submits that since distinction of pre and post has been done away in the Fifth Pay Commission which has also been accepted under the Sixth Pay Commission that means a person who retires on 01.01.2006 as a Lt. Commander and the persons who have already retired prior to 01.01.2006, there will be no distinction for them for pension. In the present case, as per the definition of the pay in the pay band by the Naval Special Order which has to be read as wherever the expression appears would mean that Rs.23810/- will be minimum pay in the pay band for the Lt. Commanders and equivalent rank.

9. As against this, learned counsel for the respondents has strenuously urged before us that the expression 'minimum pay in the pay band' should only mean that the minimum of the scale in the pay band should be taken as determinative factor for the determination of the pension and not the minimum of the pay in the pay band. We would have readily accepted the contention of learned counsel for the respondents but for the fact that the Naval Special Order which defines the expression pay band and had already given a table below that what shall be the minimum pay for the Lt. Commander in the Sixth Pay Commission of the existing Lt. Commanders. Therefore, we cannot add or subtract anything beyond what have already been defined by the respondents. Had this distinction not been there perhaps the example which the respondents have shown from the various documents and the Circulars issued by the Comptroller General of Defence Accounts could have been readily accepted. But the fact that the Government by the Special Order dated 18th October, 2008 themselves have defined the pay in the pay band, therefore, we have to accept the definition given by them and then reading this expression 'the minimum of the pay in the pay band' along with the recommendations of the Pay Commission and the

implementation order should be taken for determination of the pension has to be accepted. Had this expression not been defined anywhere perhaps argument of learned counsel for the respondents would have been accepted. In this connection, we may further point out that the earlier communication dated 17th December, 1998 in the Fifth Pay Commission, the Government has clearly mentioned that pension of all pensioners irrespective of the date of their retirement shall not be less than 50%, the minimum pay was revised from 01.01.2006 for the last post held by the pensioners. Had this expression been repeated, perhaps it would carry the same interpretation. In the present case, pay structure has been revised and now all the pay scales have been categorised in the various pay bands and in the case of Lt. Commander or equivalent fall in the Pay Band-III and minimum of Pay Band-III is 15,600/- at the entry level i.e. minimum of the pay band for this rank. Had this expression used in this pay scale of Sixth Pay Commission, we would not have come to interpretation as was clarified by the Fifth Pay Commission by the Government Order dated 17th December, 1998. But in the present case, the expression pay in the pay band has been defined by the Government in the communication dated 18th October, 2008 that

puts the matter beyond any controversy. The expression which has been defined in the scheme of things has to be accepted while interpreting all the provisions of the Pay Commission and the Implementation Order. Here the expression 'minimum of the pay in the pay band' is to be taken for the purposes of deciding the pension of pre 2006 pensioners. Therefore, one has to interpret the provisions as exists and we have to take it minimum pay in the pay band for equivalent rank then that comes to Rs.23,810/- determined by the Government in Column 7 of table at para 4 (a) as such we have to accept the figure of 23810/- being the minimum of the pay in the pay band for Lt. Commanders and equivalent ranks. If that is taken then naturally 50% of this will have to be treated as a basic pension and rest of it will be added to it as grade pay and other benefits which are given to the persons of that rank. There is no controversy with regard to grade pay and Military Service pay and other benefits to which we are not concerned. We are concerned with what is minimum has to be taken for pre 2006 retirees and minimum pay scale for the purposes of determining the pension. In our opinion as per the Government order for all pre retirees of Lt. Commander and other ranks their minimum of the pay has to be accepted as determined

by the Government for the purpose of fixation of the officers in 2006 i.e. Rs.23810/-. Accordingly, we direct let the pension of pre retirees should be decided on the basis of minimum of the pay in the pay band i.e. Rs.23,810/- with all other benefits and shall be given to them. All exercise may be completed as far as possible within three months. Both the petitions are allowed in view of aforesaid terms. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 14, 2010.