

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(reserved on 14.3.2012).

I. O.A.509/CH/2011 Date of order:- March 23, 2012.

Coram: Hon^{ble} Mr. Justice S.D.Anand, Member (J).
Hon^{ble} Mr. Khushiram, Member (A)

1. Association of Retired Officers of Indian Audit & Accounts Department, Chandigarh care of Principal Accountant General (Audit) Punjab U.T. Sector 17-E, Chandigarh, through its Principal Secretary Sh.Y.P.Doshi.

2. Y.P.Doshi son of Shri Uttam Chand, aged 69 years, Senior A.O.(Retired), r/o 601, Phase X, Mohali.

3. Ramesh Capoor son of Sh. Hukam Chand Capoor, aged 68 years, resident of House No.3334, Sector 23-D, Chandigarh.

4. Daulat Ram s/o Shri Amar Nath, aged 67 years, resident of House No.370, Sector 45-A, Chandigarh.

5. C.L.Nayyar s/o Shri Mulakh Raj Nayyar, aged 74 years, resident of House No.3231, Sector 37-D, Chandigarh.

6. R.C.Hastir son of Shri Kesho Ram, aged 75 years, resident of House No.2652, Sector 37-c, Chandigarh.

✓ 7. A.L.Vohra son of Bhagat Ram Vohra, aged 75 years, resident of House No.310-A, Sector 51-A, Chandigarh.

8. B.B.Chadha son of Shri Mohan Lal Chadha, aged 66 years resident of House No.724, Sector 26, Panchkula.

112. Joginder Singh Gadh son of Shri Santokh Singh aged 69 years, resident of House No.4019, Sector 46-D, Chandigarh.

(BY ADVOCATE : SHRI MANOHAR LAL).

☐Applicants.

Versus

1. Union of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pensions & Pensioner's Welfare, Lok Nayak Bhawan, New Delhi-110003, through its Secretary.

2. Secretary, Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi.

3. Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-110002.

(BY ADVOCATE: SH.SURESH VERMA, FOR RESPONDENTS NO.1 & 2
SH.I.S.SIDHU, FOR RESPONDENT NO.3).

☐Respondents.

II. O.A.NO.811/CH/2011

1. Tirath Ram Garg son of Shri Sant Lal, aged 71 years, AAO(Retired), resident of # 1300/2, Sector 30-B, Chandigarh.

2. Roshan Lal Malhotra son of Shri B.L.Malhotra, aged 78 years, AAO(Retired), resident of # 3092, Sector 27-D, Chandigarh.

3. Mohan Lal Pangotra son of Shri Kirpa Ram, aged 74 years, DAG(Retired), resident of # 1148, Phase III B-2, Mohali

4. Janak Raj Sharma son of Shri Budda Ram, aged 68 years, DAG(Retd), resident of # 227, Kendriya Vihar, Sector 48-B, Chandigarh.

5. Smt. Usha Sharma d/o Sh.S.N.Sharma and wife of Sh.J.R.Sharma, aged 66 years, Sr.AO(Retd.), resident of # 227, Kendriya Vihar, Sector 48-B, Chandigarh.

6. Sarup Singh son of Shri Chamba Singh, aged 70 years, AO(Retd.), resident of # 3379, Sector 46-C, Chandigarh.

7. S.K.Nagpal son of Sh.H.C.Nagpal, aged 71 years, Sr.AO(Retd.), resident of # 3320/B, Sector 44-D, Chandigarh.
Welfare, Lok Nayak Bhawan, New Delhi-110003 through its Secretary.

2. Secretary, Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi.

4. Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.

☐ Respondents.

(BY ADVOCATE : SHRI MANOHAR LAL, FOR APPLICANT).
SH.SURESH VERMA, FOR RESPONDENTS NO.1 & 2
SH.I.S.SIDHU, FOR RESPONDENT NO.3).

III. O.A.NO.45/HR/2012.

1. Atma Singh son of Sh.Harsaroop Singh, aged 69 years, Deputy Postmaster(Retd.), resident of # 139, Dayal Bagh, Ambala Cantt.
2. Wariam Chand son of Shri Lakho Ram, aged 70 years, Deputy Postmaster(Retired), resident of # 12-A, Paras Nagar, Dalipgarh, P.O. Babyal, District Ambala.
3. Bhagat Ram son of Sh. Karta Ram, aged 69 years, Head Sorting Assistant(Retd.), resident of village Amargarh Majhara, P.O. Sirsala via Pipli, District Kurukshetra.
4. Kewal Parkash s/o Shri Gita Ram, aged 68 years, Head Sorting Assistant (Retd.), resident of House No.627, Sham Nagar, P.O. Babyal, Ambala.
5. Harbhajan Singh son of Sh. Pritam Singh, aged 69 years, Sub Postmaster(Retd.), resident of H.No.61, Aggarwal Complex, P.O. Babyal Ambala Cantt.
6. Jagdish Kumar son of Sh. Peshori Lal, aged 73 years, Sub Postmaster(Retd.), resident of 678, Punjabi MOhalla, P.O. Babyal, Ambala.
7. Kharaiti Lal son of Sh. Banarsi Dass, aged 67 years, Assistant Postmaster (Retd.), resident of # 3388/2, Patel Road, Near Hari Mandir, Kajiwada, Ambala City.
36. Shamsher Parkash son of Sh. Devi Chand, aged 68 years, Supervisor RMS(Retd), resident of House No.S-15, Shiv Partap Nagar, Ambala Cantt.
37. Sahib Singh son of Shri SHyam Singh, aged 81 years, Assistant Postmaster(Retd.), resident of Village Machhaunda, P.O. Kuldip Nagar, Ambala Cantt.
38. Jagsir Singh son of Shri Maghar Singh, aged 70 years, Sr.Postmaster (Retd.), resident of House No.24229, Guru Ki Nagri, Bhatinda.

(BY ADVOCATE : SHRI MANOHAR LAL).

☐ Applicants.

Versus

1. Union of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pensions & Pensioners Welfare, Lok Nayak Bhawan, New Delhi-110003, through its Secretary.
2. Secretary, Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi.
3. Secretary, Government of India, Ministry of Telecommunications & Information Technology, Department of Posts, Dak Bhawan, New Delhi-110001.
4. Chief Post Master General, Punjab Circle, Chandigarh.
5. Chief Post Master General, Haryana Circle, Ambala.

(BY ADVOCATE: SH.DEEPAK AGNIHOTRI).

☐ Respondents.

ORDER

Hon^{ble} Mr Khushiram, Member (A):

✓ These three OAs are disposed of by this common order as common question of facts and law are involved in these OAs. For the sake of convenience, facts are noticed from O.A.NO:811/CH/2011 (Tirath Ram Garg & Ors Versus Union of India & Ors.).

✓ 2. The applicants are Central Government Pensioners Association and individual pensioners who have filed these OAs making out a case that those who retired prior to 1.1.2006, and those who retired after this date should not be differentiated as per law laid down by the Apex Court in the case of Union of India & Another versus SPS Vains (Retired) & Ors. (2009(1) R.S.J. Page 5) and the said discrimination amounts to violation of Article 14 of the Constitution. They have further contended that it is desirable to grant complete parity in pension to all pensioners irrespective of the date of

their retirement, though, as per 5th CPC in para 137.13, this may not be feasible straight away as the financial implications should be considered. They have also pointed out that parity was maintained in the fixation of pension on acceptance of the pay of the 4th Pay report and 5th CPC on 1.1.1996. It is also pointed out that as per the instructions issued, the consolidated pension under 5th CPC shall not be less than 50% of the minimum pay of the post held by the pensioner at the time of retirement. It is also averred that 6th CPC effective from 1.1.2006 did not recommend that pension of even pre-1996 pensioners be updated by notional fixation of their pay as on 1.1.1996 by adopting the same formula as for serving employees nor it recommended absolute parity between pre-2006 pensioners and post-2006 pensioners. ON 1.9.2008, 6th CPC continued the system of modified parity (by equating the pension at least to 50% of the minimum of the revised pay scale plus grade pay), but the 6th CPC revised the pay scale with effect from 1.1.2006 in such a way that no benefit would accrue to majority of pensioners. On 2.9.2008, the Government issued OM for linkage of full pension with years of qualifying service to be dispensed once an employee renders minimum qualifying service of 20 years, pension shall be paid at 50% of the emoluments or average emoluments of last ten months, whichever is beneficial to him. This provision has been given effect from 1.1.2006 only and according to the applicants, this is contrary to the settled principle of law in the case of V.Kasturi versus Managing Director State Bank of India (1999SCC(L&S) Page 78). The Association of Pensioners had made representations to Government/Anomaly Committee to remove disparity between pre 2006 and post 2006 retirees and the matter has been discussed in various meetings of Anomaly Committee, the Government has not considered the demand of parity between pre and post 2006 retirees. Therefore, they have filed this O.A praying for the following reliefs :-

- ✓ ☐ (i) Applicants may be allowed to file a single OA;
- (ii) Action of respondents in not extending parity of pension between pre-2006 and post-2006 pensioners be quashed and set aside being illegal, arbitrary, unjust and discriminatory offending Article 14 of the Constitution of India;
- ✓ (iii) Respondents be directed to extend to the applicants (pre-2006 pensioners) absolute parity in pension with post 2006 pensioners of the Government of India with effect from 1.1.2006 with all consequential benefits. ☐

3. Respondents No.1 & 2 in O.A.No.509/CH/2011 have not filed any reply as on 19.12.2011, the counsel for these respondents stated that they are proforma respondents and do not wish to file any reply. Therefore, reply filed by the learned counsel for Comptroller & Auditor General of India, has been taken to be reply on behalf of all the respondents.

4. The respondents have contested the claim of the applicants by stating that in exercise of power under Article 77 of the Constitution of India, the Government had taken a policy decision to revise the provisions for determination of pay of the government servants with effect from 1.1.2006 which has resulted in higher pension of prospective pensioners. This policy is not discriminatory as in both the case as it accords

different benefits to the pensioners of pre-2006 and post 2005 period and the policy cannot be equated with mathematical precision in case of petitioners and post 2005 retirees. Variation of pension of pre- 2006 and post 2005 is based on policy is legally sound and unassailable.

They have further averred that the government is entitled to take into account various factors including financial implementations and availability of resources to decide what benefit or how much benefit should be granted and from which particular time and such policy is not open to judicial review unless the same arbitrary and against the public policy. The wisdom of the policy decision is not open to scrutiny unless such policy decision is wholly capricious, arbitrary and whimsical thereby offending the rule of law as enshrined in Article 14 of the Constitution and such policy decision violates any statutory provision or the provisions of the Constitution. The concept of pension has been clarified by the Apex Court time and again in catena of cases and it has been observed by the Apex Court that the pension is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion for the compensation for past service. It is in fact in the nature of a social security plans and is consistent with the socio-economic requirements of the Constitution when the employer is a State within Article 12 of the Constitution. The Apex Court has held as under :-

□ It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retire while in the same rank, they are not of the same class or homogenous group. Hence Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment. □

In the case of Re Balco Employees Union (2002(2) SCC Page 33), it was observed by the Apex Court that wisdom and advisability of economic policy are ordinarily not amenable to judicial review unless it can be demonstrated that it transgressed constitution limits. The respondents have further contended that the Association has no cause of action to file the present O.A before this Tribunal. Rule 49 of the Central Civil Service (Pension) Rule deals with the amount of initial pension admissible on retirement of a government servant and as per this Rule, the government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service and those after completing qualifying service of not less than 33 years, the amount of pension shall be calculated at fifty percent of average emoluments subject to a maximum of Rs.15,000/- per mensem. In the case of employees retiring before completing qualifying service of 33 years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) of Rule 49 and in no case the

amount of pension shall be less than Rs.1275/- per mensem. Similarly, under sub-section 3 of the Rule, notwithstanding anything contained in clause (a) & clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54. Rule (3) also makes provision for calculating the length of qualifying service and how a fraction of rupees shall be rounded off to a higher rupee. As per recommendations of 6th CPC as accepted by the Government of India, and in line of past practice, the Pay Commission made separate recommendations for revision of pension of the past pensioners and determination of pension of those retiring after implementation of its recommendations. The regulation, as per recommendations of the Commission, reads as under :-

□ Linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emolument received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extent benefit of adding years of qualifying service for purposes of computing pension/related benefits should be withdrawn as it would no longer be relevant according to para 5.1.33 of the Report of the Commission. □

As per the recommendations, full pension on completion of 20 years of qualifying service was to take effect only prospectively for all government employees other than PBORs in defence force from the date it is accepted by the government according to para 6.5.3 of the Report. With respect to revision of pension of past pensioners, the Commission had made the following recommendations :-

□ All past pensioners should be allowed fitment benefit equal to 40% of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1.4.2004) and dearness 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. 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 according to Para 5.1.47 of the Report of the Commission. □

The above recommendations were accepted by the Government with the modification that fixation of pension of past pensioners shall be based on a multiplication factor of 4.86 i.e. basic pension + dearness pension (wherever applicable) + dearness relief of 24% as on 1.1.2006 instead of 1.74. Accordingly, two office memorandums dated 29.8.2008 were issued by the Department of Pension & PW. It was also clarified that as per provision 5.1 of CCS (Pension) Rules, that a government servant retiring without qualifying service of ten years shall not be entitled to pension and shall continue to be entitled to service gratuity in terms of Rule 49(1). Similarly under recommendations 5.2, linkage of full pension with 33 years of qualifying service was dispensed with. Once a

government servant had rendered the minimum qualifying service of twenty years, he shall be entitled to 50% of pension of emoluments or average emoluments received during the last ten months, whichever is more beneficial to him. These recommendations were to come into force from the date of issue of office memorandum. But subsequently, vide OM dated 10.12.2009, a provision of paras 5.2 & 5.3 for payment of pension at 50% of the emoluments of the last pay drawn or 50% of average emoluments received during the last ten months, whichever is more beneficial to the retiring employee was made applicable to retirees who retired on or after 1.1.2006 (Annexure R-1). As per OM dated 1.9.2008, the pension/family pension of the pre-2006 pensioners were to be revised as under :-

□ 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 525 (Base year 1982-100 i.e. @ 24% of Basic Pension/Basic family pension plus dearness pension as admissible vide this Department's OM 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 clearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be recalculated 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 case of HAG + and above scales, this will be fifty percent of the minimum of the revised pay scale.□

As per OM dated 3.10.2008, the pension calculated at 50% of minimum of the 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.37400-67000 and the corresponding grade pay being Rs.10,000/- per month, his minimum guaranteed pension would be 50% of Rs.37,400/- + Rs.10,000/- i.e. Rs.23,700/-. The pension will be reduced pro-rata where the pensioner had less than the maximum required service for full pension as per Rule 49 of the CCS(Pension) Rules, 1972, as applicable on 1.1.2006 and in no case it will be less than Rs.3500/- per month. In case the pension consolidated as per para 4.1 of OM dated 1.9.2008 is higher than the pension calculated indicated above, the (higher consolidated pension) will be treated as basic pension. Similarly, fixation of pension will be subject to provisions that revised pension shall, in no case, be lower than 30% of the sum of minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the deceased government had last worked. That in case the minimum revised family pension consolidated as per para 4.1 of OM 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. The minimum revised pension that would be admissible to past pensioner in terms of para 4.2 of OM dated 1.9.2008 for each of the pre-1996/pre-2006 pay scales was indicated in the table at Annexure I of the DoPT OM dated 14.10.2008. Similarly, the pensioner who had retired from a pre-revised S-30 scale of pay (with 33 years of qualifying service) was entitled to a minimum pension of Rs.24,700/- per month. This was reflected in table annexed with OM dated 14.10.2008(Annexure R-3).

5. The Ministry of Finance amended the CCS (Revised Pay) Rules, 2008 vide notification dated 16.7.2009 placing pre-revised S-30 pay scale in the revised HAG pay scale of Rs.67000-79000 (without any grade pay). Therefore, in terms of para 4.2 of OM dated 1.9.2008, the pensioner who retired from pre-revised S-30 scale of pay after rendering 33 years of qualifying service became entitled to minimum pension @ Rs.33500/- per month w.e.f. 1.1.2006.

Table annexed with the OM dated 14.10.2008 has been modified accordingly by the Department of Pension & PW vide OM dated 20.9.2009. Thus, the minimum pension of Rs.33500/- per month w.e.f. 1.1.2006 is thus in conformity with para 4.2 of OM dated 1.9.2008. The respondents have further averred that the government by a policy decision has divided a single homogenous class of pensioners into two groups and subjected them to different treatment. The contention of the applicants that it is in violation of the judgment passed by the Hon^{ble} Apex Court in the case of D.S.Nakara and other cases. The matter has been examined in consultation with the Ministry of Law and vide OM dated 12.5.2009, it was clarified that the instructions/clarifications issued in this regard are in consonance with the decision of the Government on the recommendations of the 6th CPC. Accepting various recommendations of the CPC, a policy decision was taken to implement them from different dates for two groups of pensioners.

6. The respondents have further contended that in view of the law laid down by the Apex Court in various cases by allowing the employer to fix a cut-off date for introducing any new pension/ retirement scheme or for discontinuance of any existing scheme. Thus, the decision of the government is in accordance with the law laid down by the Apex Court and there is no violation of Article 14 of the Constitution. The representations received regarding perceived disparities in the pension of pre-2006 and post 2006 pensioners were examined in consultation with the Ministry of Finance (Department of Expenditure) and vide OM dated 11.9.2009 and 19.3.2010, it was clarified that the instructions/clarifications issued in this regard were in consonance of the decision of the recommendations of 6th CPC and no change was required to be made. Thus, they have sought dismissal of the O.A. with costs.

7. We have heard learned counsel for the applicants. During the course of arguments, he has cited a number of case law in support of his contentions including some of the extracts from the report of 5th CPC, wherein in para 137.13 it is stated that ☐ While it is desirable to grant complete parity in pension to all past pensioners irrespective of the date of their retirement, this may not be feasible straightaway as the financial implications would be considerable. ☐ In para 137.14, it is stated that ☐ the consolidated pension shall not be less than 50% of the minimum pay of the post, as revised by Fifth CPC, held by the pensioner at the time of retirement. ☐ In para 137.21,

it has been observed that the Commission has decided to enunciate a principle for the future revision of pensions to the effect that complete parity should normally be conceded upto 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 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. The learned counsel for the applicants further drawn our attention to recommendation No.12 of the recommendations of Pensionary benefits, which reads as under:-

12. 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. 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 (5.1.47). Accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86 i.e. basic pension (wherever applicable) + dearness relief of 24% as on 1.1.2006, instead of 1.74.

In the case of S.C.Parsher versus Union of India & Ors. (CWP No.678 of 2003), the Delhi High Court vide order dated 9.12.2003 has held that the clarificatory memorandum could not override the original memorandum under the guise of clarification, for more than one reason and more importantly, the clarificatory memorandum creates an artificial distinction between two categories of beneficiaries of the original memorandum dated 127th December, 1998. The so called clarification is not really clarification, but an amendment of the memorandum dated 17.12.1998. The respondents could have retrospectively amend the memorandum dated 17.12.1998 if they are so empowered in law to do, but they could not amend the said memorandum under the guise of issuing a clarification.

8. Citing the decision of the Apex Court in the case of D.S.Nakara & Ors versus Union of India (1983(S.C.C. (L&S) Page 145), the learned counsel for the applicants has argued that the Apex Court came down heavily while observing :
 With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an

arbitrary eligibility criteria: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-1 and P-2, violates Art. 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Exhibit P-1, the words: "that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date" and in Exhibit P-2, the words: "the new rates of pension are effective from 1st April 1979 and will be applicable to all service officers who became/become non-effective on or after that date." are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension from the specified date as per fresh computation is not admissible. Let a writ to that effect be issued.□

Similarly, in the case of V.Kasturi versus Managing Director State Bank of India Bombay & Another (1999 S.C.C.(L&S) Page 78), the Hon^{ble} Apex Court has held that Pension rules □ Prospective amendment of □ earlier retirees when eligible for the benefit of such amendment □ Test to determine □ where the amendment enhanced the pension or provided for a new formula of computation of pension, even the earlier retirees who at the time of retirement were eligible for pension and survived till the amendment, held, would be eligible for the benefit from the date it came into effect □ But where the amendment extended the benefit of the pensions scheme to a new class of pensioners, the earlier retirees who at the time of retirement were not eligible for pension, held, cannot get the benefit of the amendment.□

9. Citing the case law passed by the Apex Court in the case of Union of India & Another versus SPS Vains (Retd) & Ors.(2009(1) R.S.J. Page 5), the learned counsel for the applicants strenuously argued that it was held in the case that □ it would be arbitrary to allow such a situation to continue since the same also offends the provisions of Article 14 of the Constitution □ The amended rules, specifying a cut off date resulted in different and discriminatory treatment of equals in the matter of pension.□

10. The learned counsel for the applicants also invited our attention to the Full Bench judgment passed by Full Bench of the Principal Bench in the case of Central Government SAG (S-29) Pensioners □ Association through its Secretary & Another

(After considering the points raised by learned counsel for the respondents put forward by learned counsel for the appellants and the Bench of the Full Bench of the Hon'ble Supreme Court in the case of Union of India & Another vs. Union of India & Another, decided on 1.11.2011 (O.A.No.655 of 2010) by holding as under :-

versus Union of India & Another decided on 1.11.2011 (O.A.No.655 of 2010) by holding as under :-

□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 11.2.2009, 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 with effect from 1.1.2006, based on the Resolution dated 29.8.2008 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. OA are allowed in the aforesaid terms, with no order as to interest and costs.□

11. On the contrary, the learned counsel for the respondents has argued that by bifurcation of pensioners to pre-2006 pensioners and post 2006 retirees is valid and cannot be faulted with as it is a matter of policy and Courts and Tribunal should not review the policy matters. The Government has divided a single homogenous class of pensions into two groups and subjecting them to different treatment. The Government had taken a decision to implement the recommendations of the Pay Commission with regard to applicability of pension to two groups from different dates. He also stated that in view of the judgment passed by the Hon'ble Supreme Court for allowing the employer to fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme and there is no violation of Article 14 if such a course of action is adopted. The representation received in this regard have been examined by the Government in consultation with the Ministry of Finance Department & Expenditure and have thus clarified in OM dated 19.3.2010 that the instructions/clarification in this regard were in consonance with the decision on the recommendations of 6th CPC and no change is required to be made. Therefore, the OA filed by the applicants may be dismissed.

12. We have considered the rival submissions and have gone through the pleadings as well as original record produced before us at the time of final hearing.

13. The contention of the applicants for differentiation of pre-2006 and post 2006 retirees notwithstanding the right of government to introduce new scheme or to withdraw the existing schemes are policy matters which cannot be gone into by the Courts and Tribunals. However, since the similar matter has been decided by the Full Bench of the Principal Bench, C.A.T. vide judgment dated 1.11.2011 in O.A.No.655 of 2010 and other connected OAs, we are bound by the decision of the Full Bench unless it has been upset by the higher judicial dispensation. The Full Bench has directed the respondents to re-fix the pension of all pre-2006 retirees with effect from 1.1.2006 based on resolution dated 29.8.2008 and in the light of observations made above, in the preceding part of the order.□ Therefore, we have no option but to allow these three OAs in terms of the same order and direct the respondents to re-fix the pension of the applicants in these OAs without any discrimination between the two set of retirees.

and examining the documents submitted

14. All the three OAs are disposed of in the above terms. The respondents are directed to re-fix the pension and pay the arrears to the applicants within a period of four months from the date of receipt of copy of this order. No costs.

(KHUSHIRAM)
MEMBER (A)

(JUSTICE S.D.ANAND)
MEMBER (J)

Dated:

Kks

Draft order in O.A.NO. for consideration please.

(KHUSHIRAM),
MEMBER(A).

Hon^{ble} Mr. S.D.Anand,
Member(J)/HoD.