

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.937/2010
With
O.A.No.2101/2010

Order reserved on 29th day of February 2012

Order pronounced on 6th day of March, 2012

Hon'ble Shri Justice V.K. Bali, Chairman
Hon'ble Shri M.L. Chauhan, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

OA 937/2010

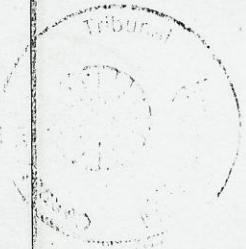
1. All India S-30 Pensioners' Association
Through its President Shri M P Budhiraja
B-9/6371, Vasant Kunj, New Delhi-70
2. Shri M P Budhiraja w/o late Shri K D Budhiraja
President, Governing Body
All India S 30 Pensioners Association
r/o B-9/6371, Vasant Kunj, New Delhi-70
3. Shri P C Sharma s/o late Shri D R Sharma
Secretary, Governing Body
All India S 30 Pensioners Association
r/o A-301, Prerana Appts GH8
Sector 56, Gurgaon - 122 011
4. Shri J M Mehra s/o Shri R R Mehra
Member, All India S 30 Pensioners Association
r/o B-7/5131, Vasant Kunj
New Delhi-70
5. Shri S M Puri s/o late Shri B M Puri
Member, All India S 30 Pensioners Association
r/o B-9/6275, Vasant Kunj
New Delhi-70

..Applicants

(By Advocate: Shri Tarun Gupta)

Versus

1. Union of India through
Secretary to the Govt. of India
Department of Pension & Pensioners Welfare
Ministry of Personnel, Public Grievances & Pensions
Lok Nayak Bhawan, New Delhi-3



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2. Secretary to the Govt. of India
Department of Expenditure
Ministry of Finance
North Block, New Delhi
3. The Secretary
Railway Board, Rail Bhawan
Raisina Road, New Delhi-1
4. Cabinet Secretary
Govt. of India
Rasthrapati Bhavan, New Delhi

..Respondents

(By Advocate: Shri Krishna Kumar)

OA 2101/2010

1. Central Govt. Pensioners' Association
Of Addl./Joint Secretary & Equivalent Officers
D-603, Anandlok CGHS Ltd.
Mayur Vihar- Phase I, Delhi-91
(Through its Secretary S.K. Ray)
2. Shri S P Biswas
s/o late Shri Panchanan Biswas
r/o C-607, Anandlok CGHS Ltd.
Mayur Vihar Phase I, Delhi-91
3. Shri G S Lobana
s/o late Shri Inder Singh
r/o C-207, Anandlok CGHS Ltd.
Mayur Vihar, Phase I
Delhi-91

..Applicants

(By Advocate: Shri L R Khatana)

Versus

1. Union of India through
Secretary to the Govt. of India
Department of Pension & Pensioners Welfare
Ministry of Personnel, Public Grievances & Pensions
Lok Nayak Bhavan
Khan Market, New Delhi-3
2. Secretary to the Govt. of India
Department of Expenditure
Ministry of Finance
North Block, New Delhi

..Respondents

(By Advocate: Shri Krishna Kumar)

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ORDER

Shri M.L. Chauhan:

By this common order, we propose to dispose of both the OAs, namely, OA-937/2010 and OA-2101/2010, as the issue involved and reliefs sought for by the applicants are the same.

2. OA-2101/2010 has been filed by the applicants, who are pre-1.1.2006 retiree officers and working in the scale of pay of Rs.22400-24500 (commonly known as S-30 scale) and in the scale of pay of Rs.18000-22400 (commonly known as S-29 scale) seeking benefits at par with post-2006 retiree officers based on the recommendations of the 6th Central Pay Commission (CPC), which became effective on 1.1.2006, whereas OA-937/2010 has been filed by the pre-2006 retiree officers in S-30 pay scale. One of the reliefs sought for by the applicants in these OAs is that pre-2006 pensioners may be allowed a total parity with post-1.1.2006 pensioners by notionally revising their pay as on 1.1.2006 and then fixing pension at 50% of that notional pay.

3. At the outset, it may be stated here that the issue regarding admissibility of pension / family pension to the pre-1.1.2006 retiree officers belonging to S-29 scale and also whether the 2006 pensioners are entitled to the pension / family pension at par with post-2006 retiree officers has been considered and decided by the Full Bench of this Tribunal in **Central Government SAG (S-29) Pensioners' Association & another v. Union of India & another** (OA-

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655/2010 with connected matters) decided on 1.11.2011 after taking into consideration the decisions of Apex Court in **D.S. Nakara & others v. Union of India**, (1983) 1 SCC 305 and **Union of India v. S.P.S. Vains**, (2008) 9 SCC 125 and the said relief has been rejected. The Full Bench of this Tribunal in the aforesaid judgment has held that pre-2006 retirees cannot claim benefit at par with post-2006 retirees, who are governed by the separate set of scheme and also that the judgment in the case of **S.P.S. Vains** (supra) was rendered in the different facts and circumstances of the case and relates to the Army personnel and based on the premise of 'one rank one pension'. However, regarding admissibility of pension based on modified parity, as recommended by the Pay Commission and accepted by resolution dated 29.8.2008, direction was given to the respondents to re-fix the pension and pay the arrears to all pre-2006 retirees belonging to S-29 scale of pay, within a period of three months from the date of receipt of a copy of the order. Thus, the aforesaid issue stands decided of in the light of the reasoning given by the Full Bench of this Tribunal for parity of reasoning given therein.

4. As regards the second grievance of the applicants that the minimum of the pay scale of the pre-revised S-30 pay scale may be raised to Rs.75500/- at par with the minimum of the pay scale of the revised S-31 pay scale, so that the minimum pension of the applicants is not less than that of those who retired before 1.1.2006, suffice it to say that the applicants herein are not entitled to the said relief based on this ground for the reasons stated hereinafter.

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5. For the purpose of claiming pension at par with retiree in pre-revised S-31 pay scale, the applicants have given historical comparison of S-30 and S-31 pay scales, which is as follows:-

Scale	S-30	S-31
III CPC	3000 (Fixed)	3000-3500
IV CPC	7300-7600	7300-8000
V CPC	22400-24500	22400-26000
VI CPC recommendation	39200-67000 + 11000 Grade Pay	39200-67000+ 13000 Grade Pay
VI CPC Implementation	67000-79000	75500-80000

6. Based upon this historical comparison of S-30 and S-31 pay scales, it is argued that since the minimum of the pay scale of both these categories are the same, pension as admissible to S-31 pre-retirees based on minimum notional pay scale stating from Rs.75500 should be made available to them. It is pleaded that the minimum pension admissible to those, who retired from pre-revised S-30 pay scale is Rs.33500/- pm, whereas the minimum pension of Rs.37750/- pm w.e.f. 1.1.2006 is admissible in respect of those employees, who retired from pre-revised S-31 pay scale.

7. We have heard the learned counsel for the parties and have gone through the material placed on record, as also the written submissions filed by Shri L.R. Khatana, learned counsel for applicants in OA-937/2010 and Shri Krishna Kumar, learned counsel for respondents in both OAs.



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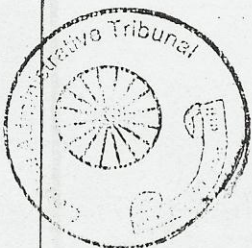
8. As can be seen from historical pay parity, as reproduced in earlier part of judgment, it is evident that the pre-revised pay scales of S-30 and S-31 categories right from 3rd CPC upto 6th CPC were different and the employees belonging to S-30 category were entitled to the pay scale of Rs.22400-525-24500 as per 5th CPC whereas the pre-revised scale of S-31 category was Rs.22400-600-26000. The 6th CPC recommended the revision of pay scale of S-30 category to that of Rs.39200-67000 with grade pay of Rs.11000, whereas in respect of S-31 category, the revised pay scale was Rs.39200-67000 with grade pay of Rs.13000. It may be relevant to state here that the Central Government improved this pay scale of S-30 category to that of Rs.37400-67000 with grade pay of Rs.12000. It is also not in dispute that after one year, i.e., vide notification dated 16.7.2009, the Central Government further improved the pay scale S-30 category to Rs.67000-79000 effective from 1.1.2006 de-linking from pay band and grade pay. This resulted in increase of pension of pre-2006 retiree from Rs.25100/- as recommended by 6th CPC (and also based on the interpretation of paragraph 4.2 of the OM dated 1.9.2008) to Rs.33500/-, i.e., an increase of over 33%. Thus, the grievance of the pre-retirees belonging to S-30 category has substantially been redressed by the Government itself by issuing the subsequent notification dated 16.7.2009.

9. Now let us examine the contentions raised by the applicants that their pension should be fixed at par with those, who retired from pre-revised S-31 pay scales. As already noticed above, such contention

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is based on the ground that minimum of the pay scale of S-30 and S-31 categories were virtually the same. At the outset, it may be stated that as per provisions contained in Rule 34 of CCS (Pension) Rules, 1972, the pension of the retirees has to be fixed on the basis of average emoluments drawn by them at the time of retirement. As can be seen from the historical comparison of pay scale of S-30 and S-31 categories, as noticed in the earlier part of this judgment, employees belonging to S-31 category were always carrying the pay or scale of pay maximum of which was higher than the pay or scale of pay of the employees belonging to S-30 category. As per 5th CPC, the maximum pay of persons belonging to S-30 category was Rs.24500/- in the pay scale of Rs.22400-24500. Thus, the persons belonging to S-30 category could have drawn maximum pension based upon their last pay of Rs.24500/-, whereas persons belonging to S-31 category could draw maximum pay upto Rs.26000/- in the pay scale of Rs.22400-26000, thus could have drawn maximum pension based upon their last pay of Rs.26000/-.

10. As already stated above, the relevant consideration for determination of pension in terms of Rule 34 of the Pension Rules *ibid* is the emoluments drawn by an employee at the time of retirement. 6th CPC has recommended different pay scales in respect of S-30 and S-31 categories. Similarly, the Government has already accepted the recommendations of 6th CPC, which is an expert body, and granted different pay scales to both these categories.




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11. Further, the Apex Court in the case of **State of West Bengal & another v. West Bengal Minimum Wages Inspectors Association & others**, (2010) 2 SCC (L&S) 1 has held that evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex Executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts. The burden to prove disparity is on the employees claiming parity. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.

12. Further to the similar effect is the decision in the case of **S.C. Chandra & others v. State of Jharkhand & others**, (2007) 2 SCC (L&S) 897 wherein it has been held by the Apex Court that fixation of pay and determination of parity is a complex matter, which is for the executive to discharge.

13. As can be seen from paragraph 8 of this judgment, the Government has upgraded the pay scale of S-30 category, as recommended by the 6th CPC by giving, firstly the grade pay of Rs.12000 and thereafter further improving the pay scale to that of Rs.67000-79000 de-linking from pay band and grade pay. Thus, it is not permissible for us to give direction to the respondents to further



upgrade the pay scale of S-30 category to that of the minimum pay scale of S-31 category and to grant the minimum pension to those of the applicants, which may not be less than that of those, who retired before 1.1.2006 from pre-revised S-31 pay scale.

14. For the foregoing reasons, both these OAs shall stand dismissed. Parties to bear their own costs.

Let a copy of this order be placed in both the OAs.

(Dr. Veena Chhotray)
Member (A)

(M.L. Chauhan)
Member (J)

(V.K. Bali)
Chairman

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Handwritten signature and date 12/26/11. Stamps include: 'COPY FOR 72 OF 2011 (Procedure Rules)', 'RECEIVED', '12/26/11', and 'Central Administrative Tribunal'.

(By Advocate: Shri Tarun Gupta)

Applicants

Versus

Union of India through
Secretary to the Govt. of India
Department of Pension & Pensioners Welfare
Ministry of Personnel, Public Grievances & Pensions
New Delhi