

**Central Administrative Tribunal
Principal Bench**

1. OA No.0655/2010
With
2. OA No.3079/2009
3. OA No.0306/2010
4. OA No.0507/2010

New Delhi this the 1st day of November, 2011.

Hon[↑]ble Mr. Justice V.K. Bali, Chairman
Hon[↑]ble Mr. M.L. Chauhan, Member (J)
Hon[↑]ble Dr. (Mrs.) Veena Chhotray, Member (A)

OA No.655/2010

1. Central Government SAG (S-29) Pensioners
Association through its Secretary
Shri Sant Bhushan Lal,
R/o C5/21, Grant Vasant, Vasant Kunj,
New Delhi-110 070.

2. Shri Satish Verma,
Retd. Chief Engineer,
Central Water Commission,
Ministry of Water Resources,
Govt. of India,
R/o B-6/8, Vasant Vihar,
New Delhi-110 057.

-Applicants

-Versus-

1. Union of India through the
Secretary to the Govt. of India,
Department of Pension and Pensioners Welfare,
Ministry of Personnel,
Public Grievances and Pensions,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

2. Secretary to the Government of India,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi.

-Respondents

OA No.3079/2009

1. Central Govt. Pensioners[↓] Association
of Additional/Joint Secretary &
Equivalent Officers,

**D-603, Anandlok CGHS Ltd.,
Mayur Vihar-Phase I,
Delhi-110091.**

- 2. Shri S.P. Biswas,
S/o late Shri Panchanan Biswas,
R/o C-607, Anandlok CGHS Ltd,
Mayur Vihar-Phase-I,
Delhi-110091.**
- 3. Shri G.S. Lobana,
S/o late Shri Inder Singh,
R/o C-207, Anandlok CGHS Ltd,
Mayur Vihar-Phase-I,
Delhi-110091.**

-Applicants

-Versus-

- 1. Union of India through the
Secretary to the Govt. of India,
Department of Pension and Pensioners' Welfare,
Ministry of Personnel, Public Grievances and Pensions,
Lok Nayak Bhawan, Khan Market,
New Delhi-110 003.**
- 2. Secretary to the Government of India,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi.**

-Respondents

OA No.306/2010

- 1. D.L. Vhora,
Chief Surveyor of Works MES (Retd.)
R/o 1020, Pocket D-1, Vasant Kunj,
New Delhi-110070.**
- 2. Om Prakash Chopra,
Chief Surveyor of Works MES (Retd.)
R/o B-111, Chander Nagar,
Janakpuri, New Delhi-110057.**
- 3. R.D. Mirza,
Chief Surveyor of Works MES (Retd.),
R/o 7178, Pocket D-7,
Vasant Kunj,
New Delhi-110070.**
- 4. S.S. Agarwal,
Chief Surveyor of Works MES (Retd.),
R/o 263, Rajouri Apartments,**

Rajouri Garden, New Delhi-110064.

5. **G.S. Mehta,
Chief Surveyor of Works MES (Retd.),
R/o B1A, 42 C, DDA Flats,
Janakpuri, New Delhi-110058.**
6. **H.R. Rajani,
Chief Engineer, MES (Retd.),
R/o 1005, Sector-A, Pocket-B,
Vasant Kunj, New Delhi-110070.**
7. **L.C. Chawla, Chief Engineer, MES (Retd.),
R/o 75, Kiran Vihar, New Delhi-110092.**
8. **Pooran Mal, Chief Engineer, MES (Retd.),
R/o 63, Amaltas Lane, Green Park,
K-5, Scheme Queens Road,
Jaipur-302021.**
9. **S.K. Shangari,
Chief Engineer, MES (Retd.),
R/o 318, SFS DDA Flats,
Ashok Vihar, Phase-IV,
New Delhi-110052.**
10. **B.K. Sharma,
Chief Engineer, MES (Retd.),
R/o B-401, Munirka Apartments,
Plot No.11, Sector-9, Dwarka,
New Delhi-110075.**
11. **Ramchander Tripathi,
Chief Engineer, MES (Retd.),
R/o X-03, Suraksha Enclave,
S. No.161, New DP Road, Aundh,
Pune-411007.**
12. **Banwari Lal Singhal,
Chief Engineer, MES (Retd.),
R/o X-05, Suraksha Enclave,
S.No. 161, New D.P. Road,
Aundh Pune-411007.**
13. **M.D. Khera,
Chief Architect, MES (Retd.),
R/o A-2/123, Janakpuri,
New Delhi-110058.**
14. **K.K. Mitra,
Chief Architect MES (Retd.),**

R/o 40/197, C.R. Park,
New Delhi.

15. V.K. Razdan,
Chief Architect MES (Retd.),
R/o 2/262, Kudi Bhagtasni Housing Board,
Jodhpur-342005.

-Applicants

--Versus-

Union of India through:

1. Secretary, Ministry of Personnel,
Public Grievances and Pensions,
Dept. of Pension and Pensioners Welfare,
Lok Nayak Bhawan,
New Delhi-110003.
2. Secretary, Dept of Expenditure,
Ministry of Finance, North Block,
Central Secretariat,
New Delhi-110001.
3. Secretary,
Ministry of Defence,
South Block,
Central Secretariat,
New Delhi-110011.

-Respondents

OA No.507/2010

1. PPS Gumber,
Chief Engineer, MES (Retd.),
R/o C-23-B, Gangotri Enclave,
Alaknanda, New Delhi-110019.
2. Namo Narayan,
Chief Surveyor of Works MES (Retd.),
R/o 21, Part-3, Suresh Sharma Nagar,
Bareilly UP.
3. Rajendra Prasad,
Chief Surveyor of Works MES (Retd.),
R/o 29, Anupam Apartments,
Vasundhara Enclave,
Delhi-110096.
4. Jasbir Singh Khanna,
Chief Surveyor of Works MES (Retd.),
R/o E-5/H, DDA Flats,
Munirka, New Delhi-110067.

5. Devendra Gupta,
Chief Surveyor of Works MES (Retd.),
R/o B1/1, River Bank Colony,
Lucknow.

6. Surya Mohan Bajpai,
Chief Surveyor of Works MES (Retd.),
R/o F-110, Indralok,
Krishna Nagar,
Lucknow-226023
Uttar Pradesh.

-Applicants

-Versus-

Union of India through:

1. Secretary, Ministry of Personnel,
Public Grievances and Pensions,
Dept. of Pension and Pensioners Welfare,
Lok Nayak Bhawan,
New Delhi-110003.

2. Secretary, Dept of Expenditure,
Ministry of Finance, North Block,
Central Secretariat,
New Delhi-110001.

3. Secretary,
Ministry of Defence,
South Block,
Central Secretariat,
New Delhi-110011.

-Respondents

Memo of Appearances:

For the Applicants:

Mr. Nidhesh Gupta, Senior Advocate with Mr. Tarun Gupta, Counsel for applicants in OA Nos.655/2010.

Shri L.R. Khatana, Counsel for applicants in OA No.3079/2009.

Shri S.K. Malik, Counsel for applicants in OA No.306/2010 and 507/2010.

For the Respondents:

Shri Ritesh Kumar, Shri Piyush Sanghi, Shri Simranjeet Singh, Shri Sumit Goel, Shri Krishan Kumar, Shri Rajesh Katyal, counsel for the officials respondents.

Shri R.K. Sharma, counsel for respondents in OA No.306/2010 and 507/2010.

O R D E R

Hon'ble Mr. M.L. Chauhan, Member (J):

1. By this common order we propose to dispose of four connected Original Applications, as the issues involved in all are same, as is also suggested by the learned counsel representing the parties. Pleadings to the extent the same may be required to be mentioned are, however, extracted from OA No.655/2010 in the matter of Central Government SAG (S-29) Pensioners[↑] Association and another v. Union of India & Others.

2. Applicants, who are pre-2006 retirees, are claiming pension at par with post-2006 retirees based on the recommendations of the VI Central Pay Commission, which became effective from 1.1.2006. Considering that the issues involved have great ramifications and in the meanwhile Bombay Bench and Patna Bench of the Tribunal rendered judgment(s) against their cause., the matter was referred to the Full Bench vide order dated 29.04.2011. The grievance projected by the applicants in these OAs are that the employees, who retired prior to 1.1.2006 (specified date) and those who retired thereafter form one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not found on intelligible differentia, which has a rationale nexus with the object sought to be achieved. To substantiate this argument reliance has been placed on the judgment of the Apex Court in the case of D.S. Nakara and others v. Union of India, (1983) 1 SCC 305 and Union of India v. S.P.S. Vains, (2008) 9 SCC 125. The further grievance raised by the applicants is that their notional pay fixation and consequent pension should not be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to scale of pay from which they had retired, as accepted by the Government vide resolution dated 29.08.2008 and the clarification issued by the respondents vide impugned OM dated 3.10.2008 and 14.10.2008 contrary to the Resolution dated 29.08.2008 and OM dated 1.9.2008 in regard para 4.2, are illegal, arbitrary, discriminatory, unreasonable and unjust, as according to the applicants in the clarification/modification order dated 3.10.2008 respondents had added and deleted certain words, which completely changed its meaning as per the recommendations of the Commission as accepted by the Government. In other words, the grievances raised by the applicants are that the respondents have not revised pension of the pre-2006 retirees even as per the modified parity/formula recommended by the Pay Commission and adopted by the Government vide resolution dated 29.08.2008. It may be stated that challenge has been made only to the aforesaid issues though the additional points raised by the applicants in OA-2087/2009 and 2101/2011 have not been pressed by the learned counsel for the applicants.

3. In order to decide the aforesaid issue, few relevant facts may be noticed. The Government of India constituted VI Central Pay Commission (VI CPC) on 05.10.2006, inter alia, to examine the principles which should govern the structure of pension, death-cum-retirement gratuity, family pension and other terminal or recurring benefits having financial implications to the present and former Central Government employees appointed before 1.1.2004. The report was submitted by the Commission on 24.03.2008. The Pay Commission made separate recommendations for revision of pension of the past pensioners and for determination of pension of those retiring after implementation of its recommendations. In regard to determination of pension of those retiring after implementation of its recommendations, the Commission recommended 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 emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extant benefit of adding years of qualifying service for purposes of computing pension/related benefits should be withdrawn as it would no longer be relevant. However, regarding revision of

pension of past pensioners the Commission made recommendations as per para 5.1.47 of the report which recommendation of the Commissioner was accepted by the Government with certain modifications to which we will advert at a later stage. Thus, this modified formula formed basis for revision of the pension of the pre-2006 retirees, as adopted by resolution dated 29.08.2008, which according to applicants has not even been followed by the respondents in its true letter and spirit. Since the VI CPC has made separate recommendations for pre-2006 retirees and post-2006 retirees as such the Government issued two different OMs based upon the recommendations of the Central Pay Commission, i.e., one regarding revision of pension of past pensioners and second regarding post-2006 retirees. It is in the light of the aforesaid factual aspects the matter is required to be examined.

4. We may first examine the challenge of the applicants made on the basis of the judgment of the Apex Court in the case of D.S. Nakara (supra). It is not disputed that the Central Government employees on retirement from service are entitled to receive pension under the Central Civil Services (Pension) Rules, 1972. In D.S. Nakara's case (supra) there was no dispute regarding implementation of the liberalized scheme from a cut off date. Rather the Apex Court in the said case in para-47 has categorically held that undoubtedly when an upward revision is introduced a date from which it becomes effective has to be provided. The challenge was made only to that part of the scheme by which the benefit of "Liberalized Pension Formula" was made applicable to government servants who were in service on March 31, 1979 and retired from service on or after that date. What was the "Liberalized Pension Formula" has been mentioned in para-37 of the judgment. As can be seen from this para, under the earlier pension scheme the pension was related to "average emoluments" during 36 months just preceding retirement. On May, 25, 1979 the Government of India, Ministry of Finance issued OM No.F.19(3)EB-79 whereby the formula for commutation of pension was liberalized but it was made applicable to government servants who were in service on 31.03.1979 and retired from service on or after the specified date. The liberalized scheme introduced a slab system for commutation of pension, raised pension ceiling and provided for average emoluments with reference to the last 10 months' service. Consequently, the pensioners who retired prior to the specified date had to earn pension on the average 36 months' salary just preceding the date of retirement. Thus, they suffered triple jeopardy viz. lower average emoluments, absence of slab system and lower ceiling. It was in this context that the Apex Court held that pensioners form a class as a whole and cannot be micro-classified by arbitrary, manipulated and unreasonable eligibility criteria for the purpose of grant of revised pension. The Apex Court held that the words "who were in service on or after" are words of limitation introducing the mischief and are vulnerable as denying equality and this part of the sentence was declared as unconstitutional and struck down. It was held that liberalized pension scheme will become operative to all pensioners governed by 1979 rules, irrespective of date of retirement. At this stage it will be useful to quote relevant portions of paras 47 to 49 of the judgment in D.S. Nakara's case (supra), which thus read:

"Undoubtedly when an upward revision is introduced, a date from which it becomes effective has to be provided. It is the event of retirement subsequent to the specified date which introduces discrimination in one otherwise homogeneous class of pensioners. This arbitrary selection of the happening of event subsequent to specified date denies equality of treatment of persons belonging to the same class, some preferred and some omitted. Is this eligibility qualification severable?"

48. It was very seriously contended, remove the event correlated to date and examine whether the scheme is workable. We find no difficulty in implementing the scheme omitting the event happening after the specified date retaining the more humane formula for computation by applying the rule of average emoluments as set out in Rule 34 and introducing the slab system and the amount worked out within the floor and the ceiling.

49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners wherever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners, who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised | | ¶ (Emphasis added)

5. Thus the Apex Court in the case of D.S. Nakara (supra) has not held that the cut off date when an upward revision is introduced cannot be prescribed and is arbitrary. At this stage it may also be useful to notice the decision of the Constitution Bench of the Apex Court in the case of Indian Ex-Servicemen League and others v. Union of India, (1991) 2 SCC 104, whereby the Apex Court explained the ratio laid down in the case of D.S. Nakara (supra) and has also relied upon its earlier constitution Bench decision in the case of Krishena Kumar v. Union of India, (1990) 4 SCC 207 and held that the Court's decision in D.S. Nakara (supra) has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

6. Further the Apex Court in the case of Govt. of Andhra Pradesh and others v. N. Subbarayudu and others, (2008) 14 SCC 702 has held that even if no reason is forth-coming for fixation of particular date it should not be interfered with by the Court unless the cut off date leads to some blatantly capricious or outrageous result. At this stage, it will be useful to quote paras 5-9 of the judgment, which read thus:

¶5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab & Ors. Vs. Amar Nath Goyal (2005) 6 SCC 754).

6. No doubt in D.S. Nakara & Ors. vs. Union of India 1983(1) SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in State of Punjab & Ors. vs. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or

whimsical) vide *State of Bihar vs. Ramjee Prasad* 1990(3) SCC 368, *Union of Indian & Anr. vs. Sudhir Kumar Jaiswal* 1994(4) SCC 212 (vide para 5), *Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors.* 2004 (2) SCC 76 vide para 31), *University Grants Commission vs. Sadhana Chaudhary & Ors.* 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in *Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr.* 2008(3) 3 JT 221 and in *Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi* 2008(2) 8 JT 639 the Court must maintain judicial restraint in matters relating to the legislative or executive domain. ¶

7. Yet in another decision in the case of *Union of India v. S.R. Dhingra and others*, (2008) 2 SCC 229 the Apex Court relying upon its earlier decision in para-25 has made the following observations:

¶25 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 retired with the same rank, they are not of the same class or homogeneous 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 (vide Col B.J. Akkara (Retd) vs. Govt of India, (2006) 11 SCC 709, D.S. Nakara vs. Union of India (1983) 1 SCC 305, Krishna Kumar vs. Union of India (1990) 4 SCC 207, Indian Ex-Services League vs. Union of India (1991) 2 SCC 104, V. Kasturi vs. Managing Director, State Bank of India (1998) 8 SCC 30 and Union of India vs. Dr. Vijayapurapu Subbayamma (2000) 7 SCC 662). ¶

8. If the matter is seen in the light of the law laid down by the Apex Court, as noticed above, it cannot be said that fixation of cut off date of 1.1.2006 for the purpose of extending retiral benefits is arbitrary and it is permissible for the Government to fix a cut off date for introducing any new pension/retirement scheme or for discontinuing of any existing scheme. Thus, the challenge made by the applicants based upon the judgment in *D.S. Nakara* (supra) that pre-2006 retirees should be extended the same pensionary benefits as that of post-2006 retirees cannot be accepted.

9. Yet for another reason, pre-1.1.2006 and post-2006 retirees cannot be extended the same pensionary benefits inasmuch as the respondents on the basis of the recommendations of the VI CPC have issued two different Schemes for pre-2006 and post-2006 retirees. As regards, post-2006 retirees respondents have issued OM dated 2.9.2008 (Annexure R-1) as to how the pension has to be computed. As can be seen from this scheme, emoluments have to be computed on the basis of the revised pay structure and further as can be seen from paras 5.2 and 5.3 of the said OM ◀qualifying service▶ for the purpose of pension has been reckoned as 20 years as against 33 years, which was prevalent in respect of the employees who retired before 1.1.2006 and also that emoluments for the purpose of pensionary benefits have to be determined on the basis of 10 months▶ average emoluments or emoluments last drawn by the employee before his retirement, whichever is more beneficial. Applicants have not challenged the validity of the OM dated 2.9.2008. As such, on these grounds pre-2006 retirees cannot claim benefit at par with post-2006 retirees, who are governed by the separate set of Scheme.

10. We may now consider the claim made by the applicants based upon the decision of the Apex Court in the case of S.P.S. Vains (supra). As already stated above, the Government of India has issued OM dated 01.09.2008 (Annexure A-1) in respect of pre-2006 pensioners/family pensioners pursuant to acceptance of recommendations made by the VI CPC. Para 2.1 of this OM stipulates that these orders shall 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. Para 2.2 stipulates that separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners. Thus, reading of this OM clearly stipulates that the OM dated 1.9.2008 has been made applicable to the employees of the Central Government who are granted pension under CCS (Pension) Rules, 1972. Admittedly, the Armed Forces pensioners are not governed by the family pension Rules, 1972 but they are governed by different set of Rules. It may be stated here that in terms of the Pension Rules, 1972 the pension in the case of existing pensioners and future pensioners have to be computed by applying the rule of average emoluments as set out in Rule 34, whereas in the case of the defence pensioners, they are regulated in terms of the Special Army instructions issued in that regard based on the concept of one rank one pension, which is not applicable in respect of the employees serving in the Central Government. That apart the Government of India has also issued instructions dated 18.11.2009 based upon the judgment of the Apex Court in the case of S.P.S. Vains (supra) thereby clarifying that the judgment of the Apex Court in the case of S.P.S. Vains (supra) will not apply in the case of petitioners who retired from the civil departments and who, before their retirement, were governed by the CCS (Pension) Rules, 1972. That apart, in the case of S.P.S. Vains (supra) the Court was dealing with entirely a different issue. The issue involved in the said case was whether there could be a disparity in payment of pension to officer of the same rank, who had retired prior to the introduction of the revised pay scale, with those who retired thereafter. It was further noticed that an anomaly has arisen with the acceptance of the recommendations of the V CPC, which has created a situation whereby Brigadiers began drawing more pay than Major Generals and were, therefore, receiving higher pension and family pension than Major Generals. It was in this context that the judgment was rendered. In order to remove that anomaly Government stepped up pension of Major Generals who had retired prior to 1.1.1996, giving them pension as was given to the Brigadiers. Before the High Court it was urged on behalf of the writ petitioners that while the writ petitioners and the other similarly placed officers who had retired while holding the rank of Major Generals prior to 1.1.1996 were given the same pension as that of Brigadier. However, in the case of Major Generals who retired after 1.1.1996 their pay was initially fixed according to clause 12 (c) of Special Army instructions 2/S/1998 which enabled them to draw higher pension than those retired before 1.1.1996 despite holding the same rank. It was in this context that the Writ Petition was allowed by the High Court, directing the Government to fix minimum pay scale of the Major General above that of the Brigadier and grant pay above that of a Brigadier as has been done in the case of post 1.1.1996 retirees and consequently fix pension and family pension accordingly. Thus, according to us applicants cannot take any assistance from this judgment, which 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.

11. Thus, we agree with the reasoning given by the Bombay and Patna Benches of the Tribunal as regards fixation of pension of pre-2006 retirees at par with post-2006 retirees, based on the decisions of the Apex Court in D.S. Nakara and S.P.S. Vains (supra).

12. Now let us advert to last grievance raised by the applicants viz. that even if the modified parity, as recommended by the Pay Commission and accepted by the resolution dated 29.08.2008

is to be taken as criteria for determining pension of pre-2006 retirees, still on account of subsequent clarification issued to para 4.2 of the OM dated 1.9.2008 by the officers of the respondents vide OM dated 3.10.2008 and 14.10.2008 criteria and principles for determining the pension has been given a complete go-bye. Thus, these clarificatory OMs are illegal, arbitrary, discriminatory, unreasonable, unjust and are required to be quashed and set aside. At this stage, we wish to mention that this issue was not raised and considered by the Patna and Bombay Benches of the Tribunal, as such no finding on this aspect was given. However, in paras 66 and 67 of the judgment Patna Bench has given a direction that the Government should examine this aspect of S-29 pay scales retirees being able to retire at the maximum of the pay band 4 pay scale with the grade pay of Rs.10,000/- which would bring their pension to Rs.38,500/-. Suffice it to say that the observation made by the Patna Bench was given without taking into consideration the modified parity as recommended by the Pay Commission and accepted by the Central Government vide its resolution dated 29.08.2008, which formed the basis to grant pension to pre-2006 retirees.

13. In order to determine the issue, at this stage, it will be useful to quote item No.12 of the Resolution No.38/37/08-P&PW (A) dated 29.08.2008 whereby recommendations of the VI CPC, as contained in para 5.1.47, was accepted with certain modifications and thus reads:

S. No. Recommendation Decision of Government

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 + Dearness Pension (wherever applicable) + dearness relief of 24% as on 1.1.2006, instead of 1.74.

Based on this resolution, respondents issued OM of even number dated 1.9.2008. Para-4.2 whereof, which is relevant for the purpose, reads as follows:

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 scales, this will be fifty percent of the minimum of the revised pay scale.¶

14. On the basis of the recommendations made by VI CPC, which stood validly accepted by the Cabinet, it has been argued that principle for determining the pension has been completely altered under the garb of clarification. According to the learned counsel for the applicants on the basis of the aforesaid resolution/modified parity revised pension of the pre-2006 pensioners shall not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which the pensioner had retired.

15. Applicants in para-11 of the Additional-Affidavit have explained how the Note prepared by a junior functionary (at the level of an Under Secretary) in the Department of Pension & Pensioners Welfare in regard to para-4.2 of the OM dated 1.9.2008 has been given a go-by to the resolution dated 29.08.2008. The Note so prepared has been extracted in this para, which thus reads:

Whether the pension calculated at 50% of the minimum pay in the pay band 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, or (ii) at the minimum of pay pay in the pay band which an employee in the pre-revised scale of pay will be getting as per the fitment tables at Annex I of the CCS (Revised Pay) Rules, 2008 plus the grade pay corresponding to the pre-revised pay scales.¶

16. It is pleaded that first the need for such a doubt being raised is not clear as both the formulation of the CPC in para 5.1.47 as well as in Government Resolution dated 29.8.2008 (Annexure A-7 of the OA) is clear that !!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.¶ (emphasis added). The use of words ◀sum of↑, ◀and↑ and ◀thereon↑ leaves no doubt that both the minimum of the pay in the pay band and the grade pay have to correspond to the pre-revised pay scale. Second, without bringing out merits or demerits of either formulation, the lower functionary in DOP & PW incorporates in the clarification against item 4.2 in the OM dated 1.9.2008, the first option about !!minimum of pay in the pay band (irrespective of the pre-revised scale of pay)¶. What is worse is that there is no application of mind even at the level of Director and Secretary who merely sign the note and the clarification is issued after obtaining finance concurrence and approval of MOS (PP), without going back to the Cabinet for such a modification.

17. The learned counsel has further argued that the resultant injustice done to the pre-1-1-2006 pensioners had even been recognized by MOS (F) and MOS (PP) in their letters to the PM and MOS (F) respectively, copies of which are at Annexures A-11 (page 169) and A-12 (page 170) of the OA. A formal proposal was also sent by DOP & PW to Department of Expenditure seeking rectification but was not accepted by the latter. It was also incorrectly mentioned that the earlier provision in para 4.2 of OM dated 1.9.2008 has been issued in pursuance of the approval of the Cabinet granted to the Report of the Sixth CPC and any change would entail substantial financial implications and this was done only with the approval of the Secretary (Expenditure) without putting up the note to MOS (F) who had himself supported the change. A copy of this Note dated 2.1.2009 is enclosed as Annexure 5.

18. As regards the grievance to OM dated 14.10.2008 based on the OM dated 1.9.2008 (as clarified by OM dated 3.10.2008) whereby a revised table (Annexure A-1) of the pre-2006 pensioners pay scale/pay was finalized to facilitate payment of the revised pension/family pension, applicants have prepared a chart in respect of minimum of the pre-revised scales (modified parity) of S 29 along with 5 scales included in PB-4 works out as under and thus reads:

Min of Pre revised scale.	Pay in the Pay Band	Grade Pay (Rs.)	Revised Basic Pay (2+3)	Pension 50% of (2+3) (Rs.)
1	2	3	4	5
S-24 (14300)	37400	8700	46100	23050

S-25 (15100)	39690	8700	48390	24195
S-26 (16400)	39690	8900	48590	24295
S-27 (16400)	39690	8900	48590	24295
S-28 (14300)	37400	10000	47400	23700
S-29 (18400)	44700	10000	54700	27350

The first 4 columns of the above table have been extracted from the pay fixation annexed with MOF OM of 30th August 2008 (referred to in para 4.5 (iii) above). Revised pension of S 29 works out to Rs.27350 which has been reduced to Rs.23700 as per DOP OM of 3-10-2008 (para 4.8 (B) below).

It was explained during arguments that pay in the Pay Band indicated in column No.2 above table relates to the pay in the revised pay scale corresponding to the minimum pay in the pre-revised pay scale.

19. On the basis of this chart it has been pleaded that as per the impugned OM dated 14.10.2008 in the case of S-24 officers the corresponding pay in the Pay Band against 14300/- is shown as 37400. In addition, Grade Pay of Rs.8700/- was given totalling Rs.46,100/-. Similarly, revisions concerning all the other pay scales were accepted by the aforementioned OM dated 14th October, 2008. The illegality which has been perpetrated in the present matter is apparent from the fact that whereas an officer who was in the pre-revised scale S-24 and receiving a pay of Rs.14,300/- would now receive Rs.37,400/- plus grade pay of Rs.8700 and his full pension would accordingly be fixed at Rs.23050 (i.e. 50% of 37400 pay plus grade pay Rs.8700) pursuant to the implementation of VI CPC recommendations after 1.1.2006, whereas a person belonging to the Applicant Association, who was drawing a pay of Rs.18,400/- or even Rs.22,400/- (maximum of scale) in the pre-revised S-29 scale will now be getting pension as only 23700/- (i.e. 50% of pay of Rs.37,400/- plus grade pay of Rs.10000). However, the misinterpreted revised basic pay of Rs.37400 has caused a grave miscarriage of justice since those officers who belong to a much higher grade have now been equated with those who were working under them in a lower rank/grade. It is further relevant to note that those officers belonging to S-29 who would retired after 1.1.2006 would, however, be placed in the revised pay scale differently. For instance, a person who was in the pre-revised pay scale of 18000-22400 (S29) at Rs.18,400/- would now get Rs.44,700/- in addition to Grade Pay of Rs.10,000/- i.e. the revised basic pay of Rs.61,850/-. However, a person who retired only one day prior i.e. on 31st December 2005, even if he had received pre-revised pay of Rs.22400/- would now be placed in the revised pay of Rs.37400/- only in addition to the Grade Pay of Rs.10,000. Thus the illegality which has been committed in the present matter also relates to equating the pre-revised pay scale of Rs.18,400-22,400/- with the pre-revised pay scale of Rs.14,300-18,300/-.

20. In order to buttress the aforesaid submission applicants have given specific instance of an officer in para-6 of the Additional Affidavit who retired at a higher pay on 31.12.2005 getting a much higher pension at that time than another officer who retired only 5 days later, i.e., on 5.1.2006 at a lower pay. After implementing the VI CPC recommendations, as illegally modified by the Department of Personnel, the result is that the concerned person who retired on 31.12.2005 is getting far lower pension than the person who retired 5 days later. A copy of the said chart amplifying the above position has also been reproduced, which is to the following effect:

Name	Ashok K. Ghosh	R.K. Goel
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Department	Railways	Water Board
Scale of Pay	18400-500-22400	18400-500-22400
Date of Retirement	31.12.2005	05.01.2006 i.e. only 5 days
Last Pay Drawn	Rs.22900 (incl. one Stagnation increment)	Rs.21400
Average 10 months Emoluments incl. Dearness Pay	Rs.34350	Rs.31737.50 or 31737
Original Pension fixed	Rs.17175	Rs.15869
Revised Pension Fixed after 6th CPC implementation	Rs.22587 (i.e. Rs.22900x2.26)	Rs.29435

21. Applicants have also explained as to how the disparity has resulted on account of implementation/acceptance of VI CPC recommendations by the Government vide resolution dated 29.08.2008. As can be seen from the clarificatory order dated 30.08.2008 (Annexure A-6 at pages 139-147) regarding pay scale of S-24 to S-29, the pay scales of the V CPC of Rs.14300-18300 in respect of S-24 employees, the VI CPC has placed them in Pay Band-3 and recommended the Pay Band of Rs.15,600-39100/- plus Grade Pay of Rs.7600 per month. However, the Government has upgraded the said S-24 category to Pay Band 4 and placed them in the pay Band of Rs.37,400-67,000/- plus Grade Pay of Rs.8700/- per month. It is, therefore, absolutely clear that the Government authorities have increased the pay of S-24 employees by far more than double. Further, it is very relevant to note that the said impact would be not only on the retired S-24 officers but also on the large base of serving employees. Similarly, the same is the position with regard to S-25, S-26 and S-27 all of whom were recommended by the Sixth Pay Commission to be in the pay band of Rs.15,600-39,100/- but were placed by the Government in the pay band of Rs.37,400-67,000/-. Similarly in the case of employees who were placed in S-29 pay scale they were recommended Pay Band of Rs.39,200-67000/- plus Grade Pay of Rs.9,000/- per month by the VI CPC, whereas the Government has revised pay structure to Rs.37,400-67000/- plus Grade Pay of Rs.10,000/- per month. This has resulted in the anomaly which is essentially to be rectified.

22. It is submitted that the applicants are in the category of retired employees and are a diminishing category. In contrast, the serving employees of S-29 category are being given the benefits of the recommendations of the VI CPC. Further, as explained earlier, the benefits available in S-24 to S-27 grade are available not only to retired employees but also to the large base of serving employees. The financial effect of the same is many-many times that of the small additional expenditure which will be incurred on account of the benefits sought by the Applicants. Therefore, the argument sought to be raised by the Union of India during the course of hearing regarding the so-called financial impact has no factual basis at all.

23. Thus, according to the applicants the aforesaid disparity, which has been caused on account of granting enhanced scales in S-24 to S-27 grade contrary to the recommendations of the VI CPC and further reducing the scales recommended by the Pay Commission in respect of S-29 grade to be at par with the employees who were placed in S-24 to S-27 grade is required to be set right. According to the learned counsel of applicants even if the cut off date of 1.1.2006 for revision of the pay scale and grant of pensionary benefits on the basis of VI CPC is to be upheld, even then the applicants are entitled to relief based upon the Resolution dated 29.08.2008 whereby the recommendations of the Pay Commission was accepted and on account of disparity,

which has resulted in granting different pay scales, as recommended by the VI CPC, which has caused prejudice to the applicants and thus has to be set right.

24. The stand taken by the respondents is that the recommendations of the VI CPC, as accepted by the Government vide Resolution dated 29.08.2008 and further clarification issued by the respondents is in consonance with the recommendations so accepted. It is stated that there may be a slight change in the word used in the clarification issued by the Government subsequently but has the same meaning as in the latter part of para 5.1.47 of the report of the VI CPC as accepted by Government. The phrase "minimum of the pay in the Pay Band" has been used and this phrase carries the same meaning i.e., the pay from which a pay band starts. It is stated that the clarification on OM dated 3.10.2008 was issued after due exercise in Department of Pension and Pensioners Welfare and Ministry of Finance and with the approval of the Hon^{ble} Minister of State. It is further stated that VI CPC has not made any recommendation for complete parity between the pre-1996 and post-1-1-1996 pensioners. Therefore, question of allowing complete parity between pre-1996 and post 1.1.1996 pensioners would not arise. It is stated that the OM dated 1.9.2008 has been further clarified on 3.10.2008 that pension calculated at 50% of the minimum of the pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised sale of pay) plus the grade pay corresponding to the pre-revised pay scale.

25. In order to decide the matter in controversy, at this stage, it will be useful to extract the relevant portions of para 5.1.47 of the VI CPC recommendation, as accepted by the Resolution dated 29.08.2008, para 4.2 of the OM dated 1.9.2008 and subsequent changes made in the garb of clarification dated 3.10.2008, which thus read:

(Continued)

Para 25 (Continued)

<p>Resolution No.38/37/8- P&PW(A) dated 29.08.2008- Para 5.1.47</p>	<p>1st Distortion as per OM DOP&PW OM No 38/37/08-P&PW (A) dated 1.09.2008 (Page38 of OA)</p>	<p>2nd distortion as per OM DOP&PW OM No 38/37/08-P&PW (A) dated 03.10.2008</p>
<p>The fixation as per ii above will be subject to the provision “that the revised pension, in no case, shall be lower than <u>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.</u>”</p>	<p>The fixation as per ii above will be subject to the provision “that the revised pension, in no case, shall be lower than 50% of the <u>(sum of the) minimum of the pay in the pay band plus (and) the grade pay (thereon) corresponding to the pre-revised pay scale from which the pensioner had retired.</u></p>	<p>The Pension Calculated at 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] plus grade pay would be calculated (i) at the minimum of the pay in the pay band <u>irrespective of the pre-revised scale of pay plus</u> 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 10000 pm, his minimum guaranteed pension would be 50% of Rs 37400+Rs 10000 (i.e. Rs 23700)</p>
	<p>Strike out are deletions and bold letter addition</p>	<p>Strike out are deletions and bold letters addition</p>

26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is clear that the revised pension of the pre-2006 retirees should not be less 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 held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired has been given a go-by by deleting the words "sum of the pay and grade pay thereon corresponding to the pre-revised pay scale" and adding "irrespective of the pre-revised scale of pay plus" implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words "sum of the pay and grade pay thereon corresponding to the pre-revised scale" and addition of the words "irrespective of the pre-revised scale of pay plus", as introduced by the respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet. Thus, such a course was not permissible for the functionary of the Government in the garb of clarification, that too, at their own level without referring the matter to the Cabinet.

27. We also wish to add that the Pay Commissions are concerned with the revision of the pre-revised pay scales and also that in terms of Rule 34 of the CCS (Pension) Rules, 1972 the pension of retirees has to be fixed on the basis of the average emoluments drawn by them at the time of retirement. Thus, the pre-revised scale from which a person has retired and the emoluments which he was drawing at the time immediately preceding his retirement are a relevant consideration for the purpose of computing revised pension and cannot be ignored. As such, it was not permissible for the respondents to ignore the pre-revised scale of pay for the purpose of computing revised pension as per the modified parity in the garb of issuing the clarifications, thereby altering the modified parity/formula, which was accepted by the Central Government vide its resolution dated 29.08.2008.

28. The above view is also fortified by paras 137.15, 137.20 and 137.21 of the V CPC recommendations, as reproduced below, leading to modified parity, which were also accepted by the VI CPC and accepted by the Central Government and thus read:

Immediate relief to pensioners

137.15 While the work relating to revision of pension of pre 1.1.1986 retirees by notional fixation of their pay shall have to be undertaken by the pension sanctioning authorities to be completed in a time-bound manner, we suggest that the pensioners should be provided some relief immediately on implementation of our recommendations. The pension disbursing authorities may be authorized to consolidate the pension by adding (a) basic pension; (b) personal pension, wherever admissible; (c) dearness relief as on 1.1.1996 on basic pension only; (d) Interim Relief (I and II) and (e) 20% of basic pension. The consolidated pension shall be not less than 50% of the minimum pay, as revised by the Fifth CPC, of the post held by the pensioner at the time of retirement. This may be stepped up by the pension disbursing authorities, wherever feasible, to the level of 50% of the minimum pay of the post held by the pensioner at the time of retirement. (emphasis supplied)

Modified parity conceded

137.20 We have given our careful consideration to the suggestions. While we do not find any merit in the suggestion to revise the pension of past retirees with reference to maximum pay of the post held at the time of retirement, as revised by the Fifth CPC, there is force in the argument that the revised pension should be not less than that admissible on the minimum pay of the post held by the retiree at the time of retirement, as revised by the Fifth CPC. We have no hesitation in conceding the argument advanced by pensioners that they should receive a pension at least based on the minimum pay of the post as revised by Fifth Pay Commission in the same way as an employee normally gets the minimum revised pay of the post he holds. We recommend acceptance of this principle, which is based on reasonable considerations. (emphasis supplied).

Principle enunciated

137.21 The Commission has decided to enunciate a principle for the future revision of pensions to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. This guiding principle which we have accepted would assure that past pensioners will obtain complete parity between the pre-1986 and post-1986 pensioners but there will be only a modified parity between the pre-1996 and post-1996 pensioners. The enunciation of the principle would imply that at the time of the next pay revision say, in the year 2006, complete parity should be given to past pensioners as between pre-1996 and post-1996 and modified parity be given between the pre-2006 and post-2006 pensioners. (emphasis supplied)

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

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

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

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

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

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

(Dr. Veena Chhotray)
Member (A)

(M.L. Chauhan)
Member (J)

(V.K. Bali)
Chairman