

CWP No. 19641 of 2009
CWP No. 19642 of 2009
CWP No. 3452 of 2010
CWP No. 12638 of 2010
CWP No. 20725 of 2010
CWP No. 20726 of 2010
CWP No. 20727 of 2010
CWP No. 20753 of 2010

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 19641 of 2009
Date of Decision : 21.12.2012**

**R.K. Aggarwal and others
...Petitioners**

Versus

**State of Haryana and others
...Respondents**

CWP No. 19642 of 2009

**Satish Bhalla and others
...Petitioners**

Versus

**State of Haryana and others
...Respondents**

CWP No. 3452 of 2010

**Shri O.P. Kapur and others
...Petitioners**

Versus

**State of Haryana and others
...Respondents**

CWP No. 12638 of 2010

**M.L. Kansal and others
...Petitioners**

Versus

**State of Haryana and others
...Respondents**

CWP No. 20725 of 2010

R.K. Sehgal and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

CWP No. 20726 of 2010

R.K. Bali and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

CWP No. 20727 of 2010

B.K. Jain and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

CWP No. 20753 of 2010

C.K. Gupta and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

CWP No. 19641 of 2009
CWP No. 19642 of 2009
CWP No. 3452 of 2010
CWP No. 12638 of 2010
CWP No. 20725 of 2010
CWP No. 20726 of 2010
CWP No. 20727 of 2010
CWP No. 20753 of 2010

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CORAM: HON'BLE MR. JUSTICE A.K. SIKRI, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ashwani Talwar, Advocate,
with Mr. Aftab Singh, Advocate,
for the petitioners,
in CWP Nos. 19641 and 19642 of 2009.

Mr. Manohar Lal, Advocate,
for the petitioners,
in CWP No. 3452 of 2010.

Mr. H.L. Tikku, Senior Advocate,
with Mr. Sumeet Goel, Advocate,
and Mr. Yashmeet, Advocate,
for the petitioners,
in CWP No. 12638 of 2010.

Mr. R.K. Chopra, Senior Advocate,
with Mr. Amit Chopra, Advocate,
for the petitioners,
in CWP Nos. 20725 to 20727 and 20753 of 2010.

Mr. Karan Nehra, Advocate,
for the petitioners,
in CWP No. 20726 of 2010.

Mr. B.S. Rana and Mr. P.S. Batta, Add. AGs, Haryana.

Mr. Mohnish Sharma, Advocate,
for respondent No. 4,
in CWP No. 20726 of 2010.

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A.K. SIKRI, C.J.

The petitioners in all these eight writ petitions are identically situated whose grief is common. All these petitioners retired from service before 01.01.2006 and have been drawing pension on the basis of pre-revised scales which were prevalent at the time of their retirement. With effect from 01.01.2006, the State of

Haryana has revised the pay scales on the lines of recommendations of the 6th Central Pay Commission. The pensions of these petitioners have also been revised as a consequence. However, the petitioners feel that they are discriminated against, as the manner of refixation of their pension is not in tune with the revision in pay scales as accepted by the government and also that they are given different treatment than that given to the employees retiring after 01.01.2006. As a consequence, their pension is fixed at lower amount than the one being given to the retirees after 01.01.2006. It is this differential treatment based on different formulae provided by the respondents - one for those retired before 01.01.2006 and different formulae for those retired after 01.01.2006 - which is challenged as violative of Article 14 of the Constitution of India. The difference in the fixation of pension for two categories of employees has come up in the circumstances enumerated hereafter. However, since these employees belong to different categories, but the principles on which the pension of the two categories are fixed are identical, for the sake of brevity, we take note of these circumstances from CWP No. 12638 of 2010.

2. The petitioners in this writ petition, who are 27 in numbers, retired as Chief Engineers of Haryana Irrigation Department. As pointed out above, all these petitioners retired prior to 01.01.2006, as on 31.12.2005, these petitioners were getting pension on the basis of

50% of the notional pay or actual pay drawn (depending on the qualifying service) in the previous pay scale of Rs. 18400-22400 (which was the pay scale of the post of Chief Engineer revised earlier w.e.f. 01.01.2006 on the recommendations of the 6th Central Pay Commission).

3. It is a matter of common knowledge that 6th Central Pay Commission was constituted by the Government of India on 05.10.2006. It submitted its report on 24.03.2008, which was accepted by the Government of India. The Government of Haryana also adopted the same report in respect of its employees and made it effective from the same date, namely, 01.01.2006.

4. The State of Haryana had framed the following rules on the pattern adopted by the Central Government for implementation of the revised pay scales in respect of the employees serving in the State of Haryana:-

(i) Haryana Civil Services (Revised Pay) Rules, 2008 notified vide notification GSR 45/Const/Art. 309/08 dated 30.12.2008.

(ii) Executive instructions for implementation of the above said revised pay rules regarding fixation of pay and payment of arrears issued vide notification No. 1/83/2008/IPR(FD) dated 07.01.2009 alongwith fitment tables of pay fixation.

(iii) Haryana Civil Services (Revised Pension) Part 1 Rules, 2009 applicable to pre-2006 pensioners issued vide notification No.

2/51/2008-1 Pension, dated 17.04.2009.

*(iv) Haryana Civil Services (Revised Pension)
Part II Rules, 2009 applicable to post-2006
pensioners notified vide notification No.
2/51/2008-1 Pension dated 17.04.2009.*

5. Right from 3rd Pay Commission (1973) till 01.01.1996, the existing pay scales were replaced by revised pay scales. From 01.01.1996, the 5th Central Pay Commission had evolved a concept of modified parity with substantial increase in pension of past pensioners by granting them the benefit of the revised scale and fixing the pension at 50% of the minimum of corresponding revised pay from which the petitioners had retired. The pension of past pensioners was fixed notionally on the basis of minimum of the revised pay and the same was followed by the Haryana Government.

6. The 6th Central Pay Commission introduced the concept of Pay Bands and Grade Pay and to ensure the conceded modified parity made recommendations in para 5.1.47 of the report in the following terms:-

“The revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table.”

The distinctive feature of the 6th Central Pay Commission report was the concept of creating 4 Pay Bands alongwith Grade Pay by

covering the existing 32 pay scales. The remaining two pay scales pertaining to Secretary and Cabinet Secretary were done away with and instead they have been granted fixed pay.

7. The Haryana Government had also adopted the pattern of Central Government and existing functional pay scales from Sr. No. 26 to 32 were placed in Pay Band 4, as enumerated in Haryana Civil Services (Revised Pay) Rules, 2008 dated 30.12.2008, in part A of Section 1 (page 1436). The pay scales of the employees of the Haryana Government were revised w.e.f. 01.01.2006 and accordingly Superintending Engineers, Chief Engineers and Engineers-in-Chief who were getting different pay scales prior to 01.01.2006 were placed in pay band 4 i.e. Rs. 37400-67000. Thus, the pay scale of Rs. 18400-500-22400 is revised to Rs. 37400-67000 with corresponding grade pay of Rs. 10000/- w.e.f. 01.01.2006.

8. Vide notification dated 07.01.2009, the Haryana Government has implemented Haryana Civil Services (Revised Pay) Rules, 2008 and Haryana Civil Service (Assured Career Progression) Rules, 2008. Necessary pay fixation is done vide this notification and arrears paid accordingly. For those employees, who were in the pre-revised scale of Rs. 18400-22400, revised pay band plus grade pay is fixed as under:-

Pre-revised scale (31)	Revised Pay Band + Grade Pay
Rs. 18400-500-22400	PB-4 Rs. 37400-67000+10000

Pre-revised Basic Pay	Revised Pay		
	Pay in the Pay Band	Grade Pay	Revised Basic Pay
18400	43390	10000	53390
18900	44700	10000	54700
19400	44700	10000	54700
19900	46050	10000	56050
20400	46050	10000	56050
20900	47440	10000	57440
21400	47440	10000	57440
21900	48870	10000	58870
22400	48870	10000	58870
22900	50340	10000	60340
23400	50340	10000	60340
23900	51850	10000	61850

9. A perusal of this notification would show that an employee at the threshold of pre-revised scale of Rs. 18400-500-22400 i.e. who was getting basic pay of Rs. 18400/-, his pay is fixed in the pay band at Rs. 43390/- and after adding grade pay of Rs. 10000/-, revised basic pay of such an employee is Rs. 53390/-. Thereafter, vide notification dated 17.04.2009, the Governor of Haryana, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, made the Rules called the Haryana Civil Services (Revised Pension) Part 1 Rules, 2009 (hereinafter referred to as Revised Pension Rules, 2009). These Rules have come into force w.e.f. 01.01.2006 and are made applicable to all pensioners/family pensioners, who were drawing their pension/family pension or who

were eligible/entitled to pension/family pension on 01.01.2006 under the Punjab Civil Services Rules Volume II, as amended from time to time. Rule 6 of the Revised Pension Rules, 2009, which is the bone of contention in these petitions, reads as under:-

“Minimum ceiling of pension/family pension

6. (1) The fixation of revised entitlement of pension shall be subject to the provision that the revised entitlement of pension so worked out shall, in no case, be lower than fifty percent of the minimum of the pay in the pay band + grade pay in the corresponding revised scale in terms of Haryana Civil Services (Revised Pay) Rules, 2008, or as the case may be, Haryana Civil Services (Assured Career Progression) Rules, 2008, to the pre-revised pay scale from which the pensioner had retired.

(2) The entitlement of pension calculated at 50 percent of the minimum of pay in the pay band plus grade pay would be 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 per cent of Rs. 37400 + Rs. 10000 that is Rs. 23,700/-.

(3) The entitlement to pension as worked out in terms of sub rules (1) and (2) above shall further be reduced pro-rata in all cases where the pensioner had less than the minimum service required for full pension as per rules as applicable on 01.01.2006, and in no case it will be less than Rs. 3500/- per month.

(4) The fixation of family pension will be subject to the provision that the revised family pension, in no case, shall be lower than thirty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the pensioner/deceased Government servant had last worked. In all cases where family pension consolidated as per rule 5, happens to be higher than 30 percent of minimum of pay in the pay band + grade pay, the family pension calculated in the manner indicated above in rule-5 shall be treated as basic family pension.

(5) A revised concordance table (Annexure-I) of the pre-1996, pre-2006 and post-2006 pay scales/pay bands is enclosed to facilitate payment of revised pension/family pension. Some illustrations for calculation of pension/family pension have been given in Annexure II. It will be the responsibility of the Pension Disbursing Public Sector Banks/Treasury Officers/Assistant Treasury Officers to revise and disburse the enhanced pension in terms of rule-5 and 6 above.”

10. As per Sub Rule 2 of Rule 6 above, an employee who had retired in the pre-revised pay scale of Rs. 18400-22400 and was getting pension in the said pay scale (which would naturally cover those employees who had already retired prior to 01.01.2006 like the petitioners), pension of such an employee is to be fixed at Rs. 23,700/- i.e. termed as minimum guaranteed pension. The petitioners object to this provision. According to them, an employee who was having basic pay of Rs. 18400-22400, his pay is fixed at

Rs. 53,390/- in the pay band of Rs. 37400-67000, 50 per cent thereof would be Rs. 26,695/-. It is, thus, submitted that the pension could not be fixed at an amount lesser than Rs. 26,695/- and figure of Rs. 23,700/- mentioned in the aforesaid Rule is clearly erroneous and illegal. It is argued that in this manner the revised pension fixed is going to be less than minimum 50 per cent guaranteed. It is also the case of the petitioners that this formula has resulted in invidious discrimination qua those employees who would be retiring after 01.01.2006, as in their case, an employee who was drawing basic pay of Rs. 18,400/- and whose pay was fixed at Rs. 53,390/- would get a pension of Rs. 26,695/-. Creation of two classes of pensioners when they are identically situated cannot be allowed. For this submission, the petitioners have heavily relied upon the judgement of the Supreme Court in **D.S. Nakara Vs Union of India**, 1983(1) SCC 305. Number of other judgements post-D.S. Nakara have also been relied upon in support, reference to which, would be made at an appropriate stage.

11. The petitioners have, thus, challenged the vires of Sub Rule 2 of Rule 6 of Revised Pension Rules, 2009, to the extent, it provides different methodology of fixation of pension of pre-2006 retirees and have prayed for grant of same pension as is given to post-01.01.2006 retirees.

12. The respondent/State of Haryana has filed reply to the petition contesting the averments made therein. The provisions of Rule 6(2) of the Revised Pension Rules, 2009, are defended by contending that the petitioners are claiming fixation of their pension after fixing their pay under the Haryana Civil Services (Revised Pay) Rules, 2008, which are applicable in their case because they stood retired from the service before 01.01.2006. Since they were not in service as on 01.01.2006, the revised pay rules would not be applicable to them, which are made applicable in case of State Government employees, who were in service as on 01.01.2006. It is also mentioned in the reply that the Government of India had issued necessary clarification in this behalf. Even thereafter, some representations were received from the pre-2006 pensioners, which representations were considered and office memorandum dated 19.03.2010 was issued by the Government of India stating that no change is required to be made in this behalf. It is also contended that the petitioners cannot compare their cases with those employees who retired/will retire after 01.01.2006, as the two categories form different classes. Reference is made to so many judgements on the basis of which it is contended that **D.S. Nakara** (supra) shall not apply to the facts of the present case.

13. At the outset, we would like to point out that Full Bench of

the Central Administrative Tribunal, Principal Bench, New Delhi, has already dealt with this very issue in its judgement dated 01.11.2011, vide which, four OAs were decided, leading case - OA No. 655 of 2010, titled as **Central Government SAG (S-29) Pensioners' Association and another Vs Union of India and another.** The Tribunal has found justification in the claim of the petitioners and quashed the same clarificatory orders issued by the Government of India vide office memorandum dated 03.10.2008 (which is relied upon by the respondents herein) whereby representations of pre-01.01.2006 retirees/pensioners were rejected. The Tribunal has further directed the Union of India to refix the pension of all pre-2006 retirees w.e.f. 01.01.2006 based on the resolution dated 29.08.2008 and in the light of observations made by the Tribunal in that order. No doubt, the writ petitions challenging the aforesaid judgement are filed by the Union of India, which are pending before the High Court of Delhi. However, we were informed that the High Court has not granted any stay of operation of the said judgement of the Tribunal.

14. Be that as it may, it would be useful and apposite to examine the rationale given by the Tribunal in the said judgement in granting the relief to pre-01.01.2006 pensioners.

15. After taking note of the facts, the judgement proceeds with

the remarks that the applicants in those cases founded their claim on the basis of **D.S. Nakara** (supra) and **Union of India Vs S.P.S. Vains**, 2008 (9) SCC 125. Thereafter, the Tribunal discussed the principle laid down by the Apex Court in the case of **D.S. Nakara** (supra) alongwith other cases decided by the Supreme Court, notably **Indian Ex-Servicemen League and others Vs Union of India**, 1991 (2) SCC 104, whereby the Apex Court explained the ratio laid down in the case of **D.S. Nakara** and **Krishena Kumar Vs Union of India**, 1990 (4) SCC 207, holding that the 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 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; **Government of Andhra Pradesh and others Vs N. Subbarayudu and others**, 2008 (14) SCC 702, wherein the Supreme Court had 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; **Union of India Vs S.R. Dhingra and others**, 2008 (2) SCC 229, wherein the Supreme Court had held 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.

16. On that basis, the Tribunal came to the conclusion that the cut off date of 01.01.2006 for the purpose of extending retiral benefit was not arbitrary and challenge predicated on **D.S. Nakara** (supra) cannot be accepted.

17. There is one more reason given for arriving at this conclusion, which is contained in para 9 of this judgement, which reads as under:-

“9. Yet for another reason pre-01.01.2006 and post-2006 retirees cannot be extended the same pensionary benefits in as much 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 02.09.2008 (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 01.01.2006 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 02.09.2008. 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.”

18. Thereafter, the Tribunal discussed the judgements of the Supreme Court in S.P.S. Vains (supra) and distinguished this judgement as well, holding that it was not applicable to the facts and circumstances of the present case, as the case of S.P.S. Vains (supra) related to defence pensioners, who are regulated by the Special Army Instructions issued in that regard. It is on the concept of 'one rank one pension', which is not applicable in respect of employees serving in the Central Government/Civil Departments.

19. Notwithstanding the above, the Tribunal found itself in agreement with another contention raised by the applicants in those cases. The argument was 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 OM dated 01.09.2008 by the Central Government vide OM dated 03.10.2008 and 14.10.2008, criteria and principle for determining the pension had been given a complete go by. It was, thus, argued that these clarificatory OMs are illegal, arbitrary and discriminatory.

20. 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:

Sr. No.	Recommendation	Decision of Government
12	<p>“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 01.04.2004) 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 01.01.2006. 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 per cent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. (5.1.47)</p>	<p>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 01.01.2006, instead of 1.74.</p>

Based on this resolution, respondents issued OM of even number dated 01.09.2008. 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 scale, this will be fifty percent of the minimum of the revised pay scale.”

21. On the recommendations made by VI CPC, which stood validly accepted by the Cabinet, it was argued before the Tribunal that principle for determining the pension has been completely altered under the garb of clarification. It was argued that 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.

22. The Tribunal has accepted this contention and because of this reason, it is held that subsequent OMs dated 03.10.2008 and 14.10.2008 purportedly issued to clarify para 4.2 of OM dated 01.09.2008 were contrary to the plain meaning of the said para and whereby the criteria and principle for determination of the pension had been completely changed that too when these two subsequent OMs dated 03.10.2008 and 14.10.2008 were issued by the lower authorities having no power to issue such clarification.

23. After considering the arguments of learned counsels for all the parties, we are of the opinion that it is not even necessary to go into the various nuances and nitty gritty, which are insisted by learned counsels for the petitioners based on **D.S. Nakara** line of cases and **N. Subbarayudu and others** and **S.R. Dhingra and others** (supra), wherein ratio of **D.S. Nakara** is explained. We

proceed on the basis that fixation of cut off date by the government was in order and to this extent we agree with the reasoning given by the Tribunal where similar arguments, as advanced by the petitioners before us, were rejected. The issue can be resolved on the interpretation of OM dated 29.08.2008 itself. It is not in dispute that vide resolution dated 29.08.2008, recommendations of the 6th Central Pay Commission were accepted by the government and the pension was also to be fixed on the basis of formula contained therein. We have already reproduced the recommendations of the 6th Central Pay Commission, as contained in para 5.1.47, which was accepted by the government vide Item No. 12 of resolution dated 29.08.2008 with certain modifications. Based on this resolution, OM dated 01.09.2008 was issued. We have also reproduced para 4.2 thereof. This states in unequivocal terms that “revised pension **in no** case shall be lower than 50% of the minimum of pay in the pay band plus grade pay corresponding to the pre-revised pay scale-----”. The clear purport and meaning of the aforesaid provision is that those who retired before 01.01.2006 as well were ensured that their revised pension after enforcing recommendations of the 6th Central Pay Commission, shall not be less than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioners had retired. However, notwithstanding the

same and without any provocation, the junior functionaries in the Department of Pension nurtured a doubt **“though there was none”** and note was prepared on that basis, which led to issuance of OMs dated 03.10.2008 and 14.10.2008. The effect of these two OMs was to make revision in the pension of pre-2006 retirees by giving them less than 50% of the sum of minimum of the pay in the pay band. To demonstrate this, Mr. H.L. Tikku, learned senior counsel appearing in some of these cases drew our attention to the following chart:-

Min of Pre-revised scale	Pay in the Pay Band	Grade Pay	Revised Basic Pay (2+3) (Rs.)	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. 27,350 which has been reduced to Rs. 23,700 as per DOP OM of 03.10.2008 (para 4.8 (B) below).

24. As per the impugned OM dated 14.10.2008 in the case of S-24 officers the corresponding pay in the Pay Band against 14,300/- is shown as 37,400/-. In addition, Grade Pay of Rs. 8700/- was given totaling 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. 23,050/- (i.e. 50% of 37,400/- pay plus grade pay Rs. 8700/-) pursuant to the implementation of VI CPC recommendations after 01.01.2006, whereas a person retiring before 01.01.2006, 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 23,700/- (i.e. 50% of pay of Rs. 37,400/- plus grade pay of Rs. 10,000/-).

25. This has arisen because of resolution dated 29.08.2008 and has resulted because of deletion of certain words in para 4.2 of the OM dated 01.09.2008 or 03.10.2008. This aspect is beautifully demonstrated by the Tribunal in its Full Bench judgement in the following manner with which we are entirely agree:

“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:

Resolution No.38/37/8-P&PW (A) dated 29.08.2008- Para 5.1.47 (page 154-155)	Para 4.2 of OM DOP&PW OM No. No.38/37/8-P&PW(A) dated 1.09.2008 (page 38 of OA)	OM DOP&PW OM No. No.38/37/8-P&PW(A) dated 3.10.2008
<p>The fixation as per above will be subject to the provision 'that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale form which the pensioner had retired.</p>	<p>The fixation as per above will be subject to the provision 'that the revised pension, in no case, shall be lower than 50% of the (sum of the) minimum of the pay in the pay band plus (and) the grade pay (thereon) corresponding to the prerevised pay scale from which the pensioner had retired.</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 (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.10000 p.m., 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' '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' '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.”*

26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent OMs dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures that “the fixation of pension will be subject to the provision that the revised pension, **in no case**, shall be lower than 50% of the **sum** of the minimum of the pay in the pay band and the grade pay **thereon** corresponding to the pre-revised pay

CWP No. 19641 of 2009
CWP No. 19642 of 2009
CWP No. 3452 of 2010
CWP No. 12638 of 2010
CWP No. 20725 of 2010
CWP No. 20726 of 2010
CWP No. 20727 of 2010
CWP No. 20753 of 2010

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scale from which the pensioner had retired”, this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to refix the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months. In case, the arrears are not paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to cost.

(A.K. SIKRI)
CHIEF JUSTICE

(RAKESH KUMAR JAIN)
JUDGE

21.12.2012

Amodh