


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA Nos. 568 & 931 of 2010

Date of Order : 30-12-2011.

Between:-

1. The Defence Scientists Pensioners Association,
represented by its Vice-President
K.Ssree Ramachandra Murthy (K S R Murthy) 64 years,
S/o (late) K.Veerraju,
R/o 47, Flat No 102, Srinivasa Apartments, Laxmi nagar-1,
P O Saidabad, Hyderabad-500 059.

2. Sri K.Mallikarjuna Rao,
S/o (late) K.V.R.Murthy, aged 65 years,
(Member of DeSPA),
Retired Scientist G, DRDO,
H.No.18-8-254/A/1/20,
Bharatratna Colony, Opp: Rakshapuram,
P.O, Saidabad, Hyderabad-500 059.Applicants in OA 568/10

1. The Defence Scientists Pensioners Association,
represented by its Vice-President
K.Ssree Ramachandra Murthy (K S R Murthy) 64 years,
S/o (late) K.Veerraju,
R/o 47, Flat No 102, Srinivasa Apartments, Laxmi nagar-1,
P O Saidabad, Hyderabad-500 059.

2. Sri B.Sadashiv Reddy,
S/o B.Laxma Reddy, aged 70 years,
(Member of DeSPA),
Retired Scientist 'F', DRDO,
H.No.9-7-45/A, Road No.10,
P.O, Saidabad, Yadagiri Nagar,
Hyderabad-500 059.Applicants in OA 931/10

And

1. Union of India,
Represented by its Secretary to Government,
Department of Pension & Pensioners Welfare,
M/o Personnel, Public Grievances & Pensions,
Lok Nayak Bhavan, 3rd Floor,
Khan Market, New Delhi-110 003.

2. The Government of India,
Represented by its Secretary,
Department of Expenditure,
M/o Finance, North Block, New Delhi.

3. The Director (PP),

Department of Pension & Pensioners Welfare,
M/o Personnel, Public Grievances & Pensions,
Lok Nayak Bhavan, 3rd Floor, Khan Market,
New Delhi-110 003.

...Respondents in both OAs

Counsel for the Applicant : Sri P.V.Ramana
Counsel for the Respondents : Sri G,Jayaprakash Babu, Sr.CGSC

CORAM:

THE HON'BLE MR.JUSTICE P.SWAROOP REDDY : MEMBER (JUDL)
THE HON'BLE MR.R. SANTHANAM : MEMBER(ADMN)

(Order per Hon'ble Mr. R. Santhanam, Member (A))

Heard Sri P.V. Ramana, learned counsel for the applicant and Sri G. Jayaprakash Babu, learned Senior Central Government Standing Counsel for the Respondents.

2. The applicants in both the OAs are pre 2006 retirees and are claiming pension at par with post 2006 retirees based on the recommendations of 6th Central Pay Commission which became effective from 1.1.2006. They are aggrieved by the order of the Respondents in OM SF No.38/37-08-PW(A) dated 3.10.2008, 14.10.2008 and 11.2.2009 and by the rejection of the representation in OM F.No.38/37-P-PW(A) and orders dated 19.3.2010. Since the grievance of the applicants is the same and the issues involved are also the same, these two OAs have been taken up together and are being disposed of by this common order.

OA No.568/2011

3. Members of the applicants' Association and the 2nd applicant retired from service prior to 1.1.2006 while working as Scientist 'G' (Senior Administrative Grade officers) in the pay scale of Rs.18,400-500-24,000/-

(5th Central Pay Commission scales) in the Defence Research & Development Organization, Ministry of Defence. The said scale is known as S.29 in PB4. It is the applicants' contention that as per the recommendations of the 6th Central Pay Commission which came into effect from 1.1.2006, the PB4 included only the Senior Administrative Grade (SAG) Officers and Higher Administrative Grade (HAG) Officers. But the Government clubbed Junior Administrative Officers in the pay scales of S.24 in PB4, detrimental to the interests of S.29 and S.30 Officers and benefiting Junior Administrative Grade Officers. Officers of Senior Administrative Grade of scale S.29 and Higher Administrative Grade Scale S.30 were left out and isolated by the Government while higher pay scales were given for S.24 to S.27 grade officers and separate pay scales were given for each of S.31 and S.32 (subsequently S.30 was also given separate pay scale). But the serving personnel in Government of India were not affected by the definition of Pay Bands since for those officers serving as on 31.12.2005 pay in the pay band was defined for each stage of existing pay scales vide OM dated 30.8.2008. Even though Pay Commission had categorically stated that modified parity has been granted in respect of all pensioners retired prior to 1.1.2006 and the same has been accepted by the cabinet, by issuing the clarifications / modifications vide OM dated 3.10.2008, 14.10.2008 etc., the complete interpretation of 6th Central Pay Commission was changed. The applicants, in the S.29 scale were discriminated in this regard, even though they were discharging higher nature of duties and responsibilities while they were in service. Granting of half of minimum of the pay band i.e Rs.37,400 – 67,000 + Rs.10,000/- (grade pay) by the government to all of them through subsequent

clarifications resulted in the treatment of unequal in the hierarchy as equals which is violative of Article 14 and 16 of the Constitution of India. The applicants' contention is that S-29 Officers who retired prior to 1.1.2006 received pension of only 50% of minimum of Pay Band 4 + Grade Pay which in fact results in the equivalent of the S.24 officers who too receive the same pension. Hence the entire service which has been rendered by S.29 officers in their particular scale has been virtually negated. In addition to that, S.29 officers receive less pension than the post 1.1.2006 retirees from S.25, ~~to~~ S.26 and S.27 grades whereas they are entitled to higher pension than all the pre and post 1.1.2006 retirees in the S.24, S.25, S.26, S.27 and S.28 scales. The action of the Government has also resulted in wide disparity between pre and post 2006 retirees in that the serving S.29 officers would receive higher pension than the pre 1.1.2006 retirees of S.29 scale. Apart from that, pre 2006 officers in S.29 scale are being compared now with S.24 to S.28 officers in so far as pension is concerned.

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4. Members of the applicants' Association and the 2nd applicant retired from service prior to 1.1.2006 while working as Scientist F in the pay scale of Rs.16400-450-20000 (5th Central Pay Commission Scale) in the Defence Research & Development organization (in Ministry of Defence). The said scale is known as S.26 in pay band 4. While accepting the recommendation of 6th Pay Commission, the Government placed S.26 cadre Scientist in Pay Band IV with Grade Pay of Rs.8,900. The S.24 Scientists ^{are} also in the same pay band i.e Rs.37,400-67,000 with a grade pay of Rs.8,700/- which means

there is a difference of only Rs.200/- between S.24 and S.26 scales. As a result S.26 Officers who had retired prior to 1.1.2006 received pension of only 50% of minimum of pay band 4 + grade pay which in fact results in the equivalent of S.24 officers who too receive the same pension. Hence the entire service which has been rendered by S.26 officers in their particular scale has been virtually negated. In addition to that S.26 officers who retired before 1.1.2006 received less pension than the post 1.1.2006 retirees from S.24 grades who were drawing a basic pay of Rs.15,100/- which is much less than minimum of S.26 scale Scientist. The serving S.26 Scientists drawing minimum salary of Rs.16,400/- in the scale Rs.16,400-20,000 would receive a minimum pay of Rs.39,690+GP of Rs.8,900/- and consequently will receive pension of Rs.24,425/-. But for S.26 officers retiring before 1.1.2006, the pay is considered as Rs.37,400/- (minimum pay band) + GP of Rs.8,900/-. Thus there is wide disparity between pre and post 2006 retirees of S.26 officers. Apart from that the pre 2006 retired S.26 officers are now being compared with S.24 officers in so far as pension is concerned.

5. It may be seen from the above that the applicants are aggrieved by the classification of pensioners in two separate classes viz., pre 1.1.2006 and post 1.1.2006 for the purpose of pensionary benefits although they form one class of pensioners. The attempt to classify them into separate classes / groups is not found on intelligible differentia which has a rationale nexus with the object sought to be achieved. The applicants have placed reliance on a judgment of the Hon'ble Apex Court in the case of *D.S.Nakara Vs. Union of India (1983 (1) SCC 305)* and *Union of India Vs. SPS Vains*

(2008 (9) SCC 125). Their further grievance is that their notional pay fixation and consequential pay fixation 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 29.8.2008 and that the clarification issued by the Respondents vide impugned OM dated 3.10.2008 and 14.10.2008 contrary to the resolution dated 29.8.2008 and OM dated 1.9.2008 in regard to para 4.2 are illegal, arbitrary, discriminatory, unreasonable and unjust as according to the applicants, the Respondents through the clarification / modification dated 3.10.2008 had added and deleted certain words which completely changed the meaning as per the recommendations of the commission and accepted by the Government. In other words the applicants are also aggrieved that the Respondents have not revised pension of the pre-2006 retirees even as per the modified parity / formula recommended by the Commission and adopted by the Government vide resolution dated 29.8.2008.

6. The Respondents have filed a reply statement in OA No.568/2010 in which they have disputed the claim of the applicants that through para 4.2 of OM dated 1.9.2008 and the clarification dated 3.10.2008 and 14.10.2008, the original decision of the Government as reflected in the resolution dated 29.8.2008 has been modified. According to them, para 4.1 and 4.2 of OM dated 1.9.2008 conveyed true intention of the decision taken by the Government on the recommendation of the Pay Commission, as contained in para 5.1.47 of its report. Para 4.2 of OM dated 1.9.2008 though worded slightly differently, has the same meaning as in the latter

part of para 5.1.47 of the Report of the 6th Central Pay Commission. In para 5.1.47 of the Report of the 6th Central Pay Commission as well as in para 4.2 of the OM dated 1.9.2008, 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. For example if a pensioner has retired from a pre-revised pay scale of Rs.4000-6000, the corresponding Pay Band for this scale is Pay Band 1 (Rs.5200-20200) and the minimum of the pay in the Pay Band is Rs.5,200/-. Similarly minimum of the pay in Pay Band-2 is Rs.9300, Rs.15600 in Pay Band-3 and Rs.37400 in Pay Band-4. The Respondents have further submitted that in exercise of power under Article 77 of the Constitution of India, Government had taken a policy decision to revise the provisions for determination of pay of the Government servants with effect from 1.1.2006 which has resulted in higher pension of prospective pensioners. This policy is not discriminatory as it accords different benefits to the pensioners of pre-2006 and post-2006 period. The policy cannot be equated with mathematical precision in case of applicants and post-2005 retirees. Variations in pension of pre-2006 and post-2005 pensioners are bound to surface in implementation because of variation in pay of pre-2006 and post-2005 retirees. According to the Respondents the policy of Respondents is legally sound and unassailable and does not call for any interference of the Court. The Respondents have further contended that granting benefit of pay and pension is a matter of policy and the Government is entitled to take into account various factors including financial implications and availability of resources to decide what benefit and how much benefit should be granted and from which particular time. Such a policy is not open to judicial review unless same is arbitrary and



against public policy with the object to be achieved. The Respondents have also relied on a number of decisions of Hon'ble Supreme Court subsequent to *D.S.Nakara* (supra). In *All India Reserve Bank Retired Officers Association Vs. Union of India* (1992 Supp (1) SCC 664), the Hon'ble Supreme Court observed as follows :-

"In fixing the cut-off date the respondents had not acted mala fide with a view to deprive those who had retired on or before December 31, 1985 of the benefit of the pension scheme but for reasons stated above it was not practicable to extend the benefit to such retirees. The rationale for fixing the cut-off date as January 1, 1986 was the same as in the case of Central Government employees based on the recommendation of the Fourth Central Pay Commission."

In *Union of India Vs. S.R.Dhingra* (2008 (2) SCC 229) the Hon'ble Supreme Court had observed as follows :-

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

7. When the matter came up for hearing on 29.11.2011, learned counsel for the applicant referred to the decision of the Full Bench of this Tribunal (Principal Bench) dated 1.11.2011 in OA Nos.655/2010 and batch in which an identical issue came up for consideration and submitted that the present case also would be covered by the decision of the full bench in the said case. The learned Senior Central Government Standing Counsel also submitted that the decision of the Full Bench covers the two OAs before us.

8. We have gone through the decision of the Full Bench dated 1.11.2011 in OA No.655/10 & batch. Relying on the decisions of the Hon'ble Apex



Court in the case of Government of *Andhra Pradesh & Others Vs. N.Subbarayudu & Others 2008 (14) SCC 702 and Union of India Vs. S.R.Dingra & Others 2008 (2) SCC 229* the Full Bench held in para 8 of the order as follows :-

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. The Full Bench further held that pre-1.1.2006 and post-2006 retirees cannot be extended the same pensionary benefits for yet another reason inasmuch as the Respondents on the basis of the recommendations of the 6th Central Pay Commission have issued two different schemes for pre-2006 and post-2006 retirees. As regards post-2006 retirees Respondents have issued OM 2.9.2008 as to how the pension has to be computed. Since the applicants (before the Full Bench) had not challenged the validity of the OM dated 2.9.2008, on that ground also the pre-2006 retirees cannot claim benefit at par with post-2006 retirees who are covered by a separate set of the scheme. The Full Bench further held that the applicants cannot take any assistance on the decision of the Hon'ble Apex Court in the case of *SPS Vains (supra)* 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”.

10. However, with regard to the legality of the clarificatory OMs dated 3.10.2008 and 14.10.2008 and OM dated 11.2.2009 rejecting the applicants'

representations, the Full Bench held that they are required to be quashed and set aside. For a proper appreciation of the facts which led the Full Bench to the conclusion, Paras 25 to 27 of the order dated 01.11.2011 are reproduced below :-

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
The fixation as per 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 form which the pensioner had retired.</u>	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 preremoved pay scale from which the pensioner had retired	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)
	Strike out are deletions and bold letters addition.	Strike out are deletions and bold letters addition.

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

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“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 5.1.47 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.

11. The Full Bench held that in the garb of clarification Respondents have interpreted minimum of the pay in the pay band as minimum of the pay band and that interpretation is erroneous for the following 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/-. 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 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.”

12. In the operative portion of the order, the Full Bench held as follows :-

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.

13. The issues raised by the applicants in the two OAs before us have been answered by the full bench as stated supra. While it is clear that the applicants' claim for parity with pensionary benefits of post 2006 retirees has not been accepted, the Full Bench has held that the impugned OM dated 3.10.2008 and the OMs dated 14.10.2008, 11.2.2009 have to be quashed and set aside and ordered accordingly. The benefits extended to the applicants before the Full Bench have to be extended to the applicants before us also. Accordingly we direct that the Respondents shall re-fix the pension of the applicants on the basis of the orders passed by the Full Bench in OA No.0655/2010 and batch and pay arrears thereof within a period of three months from the date of receipt of a copy of this order on the basis of



the order.

14. The OAs are allowed to the extent indicated above. No order as to costs.

प्रमाणित प्रति
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केस संख्या
CASE NUMBER: PA 568 & 931/10
निर्णय का तारीख
DATE OF JUDGMENT: 30/12/11
प्रति किया गया
COPY MADE BY: HH/12

N. Chaitanya Bai
अनुभाग प्रमुख / Section Officer
Section Officer / Section Officer
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
हैदराबाद न्यायभवन / Hyderabad Bench