

NOTE: UNION OF INDIA & ORS. VS. CENTRAL GOVERNMENT SAG & ORS. – W.P (C) NO. 1535/2012

Brief: Note of the proceedings before Court No. 3 (Division Bench) of the Delhi High Court on 04.05.2012

(Prepared by Adv Vasav Anantharaman for Sr Adv. Mrs. Minakshi Arora)

The above captioned petition was called out for hearing today. For the Petitioner, Senior Advocate A.S. Chandhioke appeared, while Senior Advcoate Mr. Nidhesh Gupta appeared for the Respondent.

Mr. Nidhesh Gupta made only one statement, in the initial absence of Mr. Chandhioke, wherein he stated that the clarificatory notification dated 03.10.2008 could not be held valid inter alia on the ground that such clarification was issued by a Junior officer, without any approval. It was further contended by Mr. Gupta, and appreciated by the Hon'ble Court, that such clarification, if required to be issued, could have been issued only by either the same authority who issued the first notification dated 01.09.2008, or someone of equivalent or higher authority.

At this juncture, Mr.A.S. Chandhioke appeared, and began his arguments.

Arguments on behalf of Mr. A.S. Chandhioke, Counsel for the Respondents :

1. At the outset, Mr. Chandhioke stated that his arguments would be restricted to the OM's issued prior to the clarificatory OM dated 03.10.2008 only i.e. he would addressing and interpreting only the Notification dated 29.08.2008, and subsequent OM's dated 01.09.2008 and 02.09.2008.
2. Mr. Chandhioke underlined that two crucial dates to the Hon'ble Court for the purpose of the present petition, i.e. 31.12.2005, and 01.01.2006.
3. As per 6th Pay Commission, the concept of 'Pay Scale' was modified to the concept of 'Pay Band'. As a result of the same, the pay was calculated as per the Pay Band, which was fixed, in addition to which a Pay Grade was provided. He submitted that there was no dispute between the parties as to the concept of 'pay grade'.

4. Mr. Chandhioke further emphasized that as a result of the cut-off date of 01.01.2006, two broad categories of persons were created i.e. persons who retired 'Pre-2006', and thus were only connected to the Government Dept. for the purpose of 'pension', and persons who continued 'Post-2006', and thus included people who remained employees.
5. On the basis of the above, Mr. Chandhioke raised a query as to whether the two broad categories of people mentioned above, i.e. 'Pre-2006' and 'Post-2006', are at par?
6. Mr. Chandhioke proceeded to lead to Hon'ble Court through the impugned judgment of the CAT para-wise.
7. Re: Para 8, 9 - Mr. Chandhioke submitted that as per these paras, Pensionary benefits to pre-2006 and Post-2006 persons cannot be the same.
8. Re: Para 12 – Mr. Chadhioke laid emphasis that at the CAT referred to 'Clarificatory OMs' (Plural), and thus referred to both OM's dated 03.10.2008 as well as 14.10.2008.
9. Re: Para 13 – Mr. Chandhioke submitted that as per recommendation and decision of the Govt., there is no dispute that the persons pre-2006 have been not been put on par with persons Post-2006. Mr. Chandhioke laid emphasis on the following sentence at Para 13 which states - "*This is consistent with the fitment ebenfit being allowed in case of the existing employees*".
10. Mr. Chandhioke further submitted that as per the recommendation, there had been an increase of 2.26 times in the pension of the Pre-2006 retirees.
11. Re: Para 13 – Mr. Chandhioke further submitted that as per S. No. 12 (stated at Para 13 of the impugned order of CAT), the phrase 'The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower...' indicated that first, the pension was to be calculated as per the method of calculation provided for in the first half of S. No. 12, and if the amount arrived failed to equivalent or

more than the amount calculated as per '50% sum of the minimum...' method, only then would the second half of S. No. 12 come in consideration.

Mr. Chandiooke further submitted that Cl. 4.1 of the OM dated 01.09.2008 provided for method for fixation of pension. If pension, as calculated as per Cl. 4.1 + 2.26 times would be less than Rs. 37, 400 (provided in PB-4), then it shall be hiked to the minimum amount provided as per Cl. 4.2.

12. Mr. Chandhioke proceeded to submit :

- fixation of pay differs from fixation of pension.
- By virtue of OM dated 14.10.2008, the minimum 'Pay in the Pay band' of the 'existing employees', as on 01.01.2006, , was fixed at Rs. 44, 700/-.
- As per requirements in the impugned order of the CAT, the basic pay in the pay band, for the purpose of calculation of pension for Pre-2006 pensioners was also be taken as Rs. 44, 700/-.

13. It was further submitted by Mr. Chandhioke that two different classes of pensioners were created by the two OM's dated 01.09.2008 and 02.09.2008 respectively, and the same was upheld in the impugned order by the CAT.

14. Mr. Chandhioke proceeded to make the following submission : A *'higher pay' can be fixed for an existing employee vis-à-vis a retired employee, by virtue of that fact that he is an existing employee on the date, and actively working for the employer, and that such fixation of a higher pay for the existing employee has no bearing or effect on those employees who have already retired.*

15. At this juncture, the Hon'ble Court made an observation that *fixation of the pay of an existing employee, Post-2006 in the present case, may have an effect on the pension of a person who has retired Post-2006.*

16. Re: Para 16 – Mr. Chandhioke pointed out that the observation of the CAT that *"The use of the words 'sum of', 'and' and 'thereon' leaves no*

doubt that both minimum of pay in the pay band and the grade pay have to correspond to the pre-revised pay scale.” was incorrect.

The Hon’ble Court agreed with Mr. Chandhioke, and noted that the above sentence did not make sense, and was incorrect.

17. The Hon’ble Court proceeded to note that the case of the Pre-2006 retirees is that the pension should be calculated using the formula – 50% of (44, 700 + 10, 000), and not 50% of (37, 400+10000).
18. Mr.Chandhioke pointed that the amount of Rs. 44, 700 was ‘Pay fixed’ within the pay band. He further submitted that if the pension for the Pre-2006 retirees was granted as per the prayer as noted by the Hon’ble Court, then as an effect, a person who retires after 01.01.2006 will not get the pension as per the formula of 50% (44, 700+10000), and instead his pension shall be calculated as per 50% of (37, 400+10000).
19. The Hon’ble Court posed the question as to whether an increase of pay to Rs 44, 700 within the pay band would result effectively in modifying the basic pay band itself, i.e. 37, 900 – 67000?
20. Mr. Chandhioke proceeded to conclude by placing the following submissions:
 - Fixation of pay to existing employees cannot change or affect the pensionary benefits available to retired employees.
 - That as per the resolution, fitment benefit has been given at par with existing employees, and thus parity has been achieved.
 - That there is a difference between ‘Pay band’ and ‘fixation of pay’ (being the amount of Rs. 44, 700).
21. The Hon’ble Court raised the following issue for determination – What will be the minimum pay in the pay band i.e. whether it shall be the starting/minimum amount stated in the Pay Band (i.e. Rs. 37, 400), or whether it shall be the minimum pay ‘fixed’ within the pay band (i.e. Rs. 44, 700)?

22. The Hon'ble Court fixed the next date of hearing for 07.05.2012, and stated that the statement of the counsel for the Respondent in order dated 19.03.2012 that they shall not be pressing the contempt application before the Tribunal till the next date of hearing shall continue to remain in effect.