

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

- 1. CWP-3423-2014**
Parminder Singh Bedi and others
...Petitioners
Versus
Union of India and others
... Respondents
- 2. CWP-7319-2014**
Manjit Singh and others
...Petitioners
Versus
Union of India and others
... Respondents
- 3. CWP-23299-2012**
S.S. Gill
...Petitioner
Versus
Union of India and others
... Respondents
- 4. CWP-15297-2014**
Sant Parkash Singh
...Petitioner
Versus
Union of India and others
... Respondents
- 5. CWP-16110-2015**
Usha Harinder Singh
...Petitioner
Versus
Union of India and others
... Respondents

Date of Decision: December 18, 2015

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. P.S. Thiara, Advocate
Mr. H.S. Batth, Advocate
for the petitioners.

Mr. Ajay Gupta, Advocate
for UOI (in CWP-3423-2014)

Mr. Amit Sheoran, Advocate
for respondents No.1 to 4 (in CWP-23299-2012)

Mr. P.S. Kanwar, Advocate
for UOI (in CWP No.16110 of 2015)

Mr. Dharamender Sharma, Advocate
for respondents No.1,2,4,6 & 8 (in CWP-7319-2014).

Mr. Dharmender Sharma, Advocate
for Mr. Jatinder Kumar Sharma, Advocate
for respondents No. 3, 5 and 7.

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HARINDER SINGH SIDHU, J.

This order shall dispose of above mentioned five writ petitions as common questions of law and facts are involved therein. However, for facility of reference the facts are being taken from CWP No.3423 of 2014.

This petition has been filed praying for directions to quash the part of the clarification issued on 03.10.2008 (Annexure P-4) pertaining to modification of Para 4.2 of O.M. dated 01.09.2008 insofar as it relates to reduction of pension on pro-rata basis, Note-I in Annexure-I appended to O.M. dated 14.10.2008 (Annexure P-5) and paragraph No.5 of O.M. dated 28.01.2013 (Annexure P-6). It is prayed that the respondents be directed to re-fix the pension of the petitioners w.e.f. 01.01.2006 in accordance with the report of the 6th Pay Commission, which has been accepted by the Government of India.

The petitioners are Senior Citizens of about 75 years of age and above. They have retired from the Border Security Force in the rank of Deputy Inspector General, Commandant and Deputy Commandant. They have rendered more than 20 years of service but less than 33 years.

Prior to the 6th Pay Commission, the pension of the petitioners and similarly situated persons was fixed in accordance with Rule 49 of the Central Civil Service Pension Rules, 1972 (for short 'the 1972 Rules'). Rule 49 of the Rules provides that if an employee retires before completing 33 years of service but after completing 10 years of qualifying service, the amount of pension would be proportionate to the amount of pension admissible. Rule 49(b) of the Rules is reproduced as under:

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“49(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (Rupees three hundred and seventy five per mensem.”

The Government of India constituted the 6th Central Pay Commission on 05.10.2006, which submitted its report on 24.03.2008. The recommendations of the Commission were

accepted by the Government of India with certain modifications. Accordingly, a Gazette Notification dated 29.08.2008 which contained the recommendations made by the Commission and the decision of the Government of India thereon. The relevant recommendation 5.1.33 of the Sixth Pay Commission, which was accepted by the Government was as under:

“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 extent benefit of adding years of qualifying service for the purposes of computing pension/ related benefits should be withdrawn as it would be no longer be relevant.”

As per this recommendation duly accepted by the Government of India, it was clear that with the implementation of the report of the 6th Central Pay Commission, Rule 49 of the 1972 Rules linking full pension with 33 years qualifying service had been dispensed with. Consequently, Office Memorandum dated 01.09.2008 was issued indicating the manner of regulation of pension/family pension w.e.f. 01.01.2006 of all pre 2006 pensioners/ family pensioners. The relevant paras 2.1 and 4.2 of the O.M. are reproduced below:

“2.1 These orders apply to all pensioners/

family pensioners who were drawing pension/ family pension on 01.01.2006 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.

4.2 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.”

As per para 4.2 of this O.M. w.e.f. 01.01.2006, the pension/family pension of pre -2006 pensioners was in no case to be lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to pre-revised pay scales from which they had retired.

The Government of India, Department of Personnel issued Office Memorandums dated 03.10.2008 (Annexure P-4) and 14.10.2008 (Annexure P-5) in purported clarification of Office Memorandum dated 01.09.2008 wherein, inter alia, the following words have been added by way of clarification of para 4.2 of O.M. dated 01.09.2008:

“The pension will be reduced pro-rate where the pensioner had less than the maximum required service for full pension as per Rule 49 of CCS

Pension Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs.3,500/- p.m.”

Another Office Memorandum dated 28.01.2013 was issued, which also relates to revision of pension of pre-2006 pensioners. In paragraph 5 thereof, it is stated that the pension of the pre-2006 pensioners arrived at in accordance with para 4.1 or para 4.2 of O.M. dated 01.09.2008 will be reduced pro-rata where the pensioners had less than the maximum required service for full pension as per Rule 49 of the CCS (Pension) Rules, 1972 as applicable before 01.01.2006 and in no case it will be less than Rs.3,500/- p.m.

The petitioners are aggrieved of the aforesaid three Office Memorandums, inasmuch as they are in derogation of the Office Memorandum dated 01.09.2008 as per which once an employee renders minimum pensionable service of 20 years, he would be paid pension at 50% of the sum of the minimum of pay in the pay band and grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired.

It is further their case that the aforesaid Office Memorandums are violative of Article 14 inasmuch as there is no such condition in respect of post 2006 retirees. It is contended that pensioners form a homogeneous class and there can be no discrimination within that class in terms of those who superannuate before and after January 1, 2006.

Learned counsel for the petitioners state that the

matter is squarely covered by a Division Bench decision of this Court in **R.K. Aggarwal Vs. State of Haryana 2013 (4) SCT 286**. Similarly, these Office Memorandums have been quashed by the Delhi High Court in **S.A. Khan and another Vs. Union of India and others** (W.P. (C) 8012 of 2013 decided on 07.05.2015.

Learned counsel for the respondents on the other hand has placed reliance on a decision of Hon'ble the Supreme Court in **Union of India Vs. Satish Kumar 2006 (1) SCC 360** and have stated that Rule 49 of the 1972 Rules has not been repealed and as per this Rule, in respect of a Government servant who retires before completing qualifying service of 33 years, the amount of pension shall be proportionate to that admissible on completing 33 years of service.

I have heard learned counsel for the parties.

This petition has to be allowed as the matter is covered by the decisions referred to by the Ld. Counsel for the petitioners.

In ***R.K. Aggarwal's*** case(supra) the Haryana Civil Services (Revised Pension) Part I Rules, 2009 applicable to pre-2006 pensioners were in issue. These contained similar provisions as above, as the Haryana Government had adopted the pattern of the Central Government. Allowing the petitions it was observed as under:

“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:-

<i>Min of Pre-revised scale</i>	<i>Pay in the Pay Band</i>	<i>Grade Pay</i>	<i>Revised Basic Pay (2+3) (₹)</i>	<i>Pension 50% of (2+3) (₹)</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
<i>S-24 (14300)</i>	<i>37400</i>	<i>8700</i>	<i>46100</i>	<i>23050</i>
<i>S-25 (15100)</i>	<i>39690</i>	<i>8700</i>	<i>48390</i>	<i>24195</i>
<i>S-26 (16400)</i>	<i>39690</i>	<i>8900</i>	<i>48590</i>	<i>24295</i>
<i>S-27 (16400)</i>	<i>39690</i>	<i>8900</i>	<i>48590</i>	<i>24295</i>
<i>S-28 (14300)</i>	<i>37400</i>	<i>10000</i>	<i>47400</i>	<i>23700</i>
<i>S-29 (18400)</i>	<i>44700</i>	<i>10000</i>	<i>54700</i>	<i>27350</i>

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 ₹ 27,350 which has been reduced to ₹ 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 ₹ 8700/- was given totaling ₹ 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 ₹ 14,300/- would now receive ₹ 37,400/- plus grade pay of ₹ 8700/- and his full pension would accordingly be fixed at ₹ 23,050/- (i.e. 50% of 37,400/- pay plus grade pay ₹ 8700/-) pursuant to the implementation of VI Civil Procedure Code recommendations after 01.01.2006, whereas a person retiring before 01.01.2006, who was drawing a pay of ₹ 18,400/- or even ₹ 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 ₹ 37,400/- plus grade pay of ₹ 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 Civil Procedure Code 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:

<p>Resolution No. 38/37/8-P&PW (A) dated 29.08.2008- Para 5.1.47 (page 154-155)</p>	<p>Para 4.2 of OM DOP&PWOM No. No. 38/37/8-P&PW(A) dated 1.09.2008 (page 38 of OA)</p>	<p>OM DOP&PW OM No. No.38/37/8-P&PW(A) dated 3.10.2008</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 and the grade pay thereon corresponding to the pre-revised 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 pre-revised 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 ₹ 18400-22400, the corresponding pay band being ₹ 37400-67000 and the corresponding grade pay being ₹ 10000 p.m., his minimum guaranteed pension would be 50% of ₹ 37400+₹10000 (i.e. ₹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 Civil Procedure Code 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 Civil Procedure Code 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 prerevised 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 Civil Procedure Code 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 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 re-fix 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."

It was directed that the pay of the retirees who retired before 01.01.2006 be brought corresponding to the revised pay scale as per the 6th Central Pay Commission and it be ensured

that pension fixed is such that it is not lower than 50% of the minimum of the pay in the pay band and the grade pay thereon. The respondents were directed to re-fix the pension of the petitioners accordingly and pay the arrears of pension within a period of two months.

SLP (Civil) No.19784 of 2013 and other connected appeals filed against the aforesaid order were dismissed as withdrawn with liberty to approach the High Court.

Review Application No.174 of 2014 filed in the case was dismissed on 09.05.2014.

The Ernakulam Bench of the Central Administrative Tribunal had considered a similar challenge to the Office Memoranduma dated 03.10.1998 and 14.10.1998 and in its decision dated 16.08.2013 it observed as under:

“7. In the light of the above, the settled law is that in no case the pension of the pre-2006 pensioners shall be lower than fifty percent of the minimum of the pay in the Pay Bank plus Grade Pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. It means that pension of a pre-2006 retiree has to be first calculated taking into account the revised pay in the pay in the Pay Bank plus Grade Pay corresponding to the pay scale from which he retired proportionate to the length of his service and then find what is 50% of the minimum of the Pay Bank plus Grade Pay and fix higher of the two as his pension. Hence the applicants are eligible

to get the minimum pension in the Pay Band plus Grade Pay of the Deputy Office Superintendent, the post from which they had retired, with effect from 01.01.2006. Accordingly, the O.As are allowed as under:

8. The respondents are directed to issue revised Pension Payment Order (PPO) to the applicants specifying the pension on the basis of Para 4.2 of the O.M. dated 01.09.2008 i.e. 50% of the minimum of the pay in the Pay Band plus Grade Pay of the Deputy Office Superintendent and also corresponding family pension and grant all consequential benefits including arrears of pension within a period of 02 months from the date of receipt of a copy of this order. No costs”

A challenge to the said decision was negated by the High Court of Kerala in ***Union of India Vs. M.O. Inasu (O.P. (CAT) No.8 of 2014 (Z) decided on 07.01.2014)*** by observing as under:

“Issues raised in these original petitions stand covered by the decision of the Principal Bench of the Central Administrative Tribunal in O.A.No.655 of 2010 and connected cases, which has been confirmed by the High Court of Delhi in WP(C) No.1535 of 2012 and connected cases by following a Division Bench decision of the Punjab & Haryana High Court. The learned counsel for the respondent points out that Special Leave Petition filed against the aforementioned judgment of the Punjab & Haryana High Court has been dismissed by the Honourable Supreme Court. We are also shown a

copy of the order of the Honourable Supreme Court dated 29.07.2013 dismissing SLA(C) No.13280 of 2013 and SLP(C) No.23055 of 2013 filed against the decision of the Punjab & Haryana High Court. We have gone through the contents of those decisions and we do not find any way to disagree with them. These original petitions, therefore, fail. They are, accordingly, dismissed in limine.”

SLP (C) No. 21044 of 2014 against the aforesaid decision was also dismissed on 20.02.2015.

The Delhi High Court considered the same issue in **S.K. Khan's** case (supra). All the three Office Memorandums dated 3.10.2008, 14.10.2008 and 28.01.2013 in so far as they provided that the pre-2006 retirees would have their pension fixed by pro-rata reducing the same by the number of years their service was less than 33 years were quashed.

It was observed as under:

“12. The sum and substance of all the above judgments and the arguments raised by the petitioners is that the respondents cannot have different yardsticks for similarly situated persons and cannot apply different formulas for fixation of their pensions by dividing into a homogeneous class of persons. The same has already been held to be arbitrary and discriminatory by the Supreme Court in D.S.Nakara's case (supra) and S.P.S.Vains's case (supra). Moreover, the judgment dated December 21, 2012 passed by the Punjab and Haryana High Court in WP(C) No. 19641/2009 R.K.Aggarwal &

Ors. Versus Haryana State & Ors. has already held that OMs dated October 03, 2008, October 14, 2008 were issued by a lower authority who could not have altered the original OM being dated September 01, 2008. Thus the normal corollary would be that the procedure laid down under para 4.2 of the OM dated September W.P.(C) Nos.8012/2013 & 8056/2013 Page 14 of 19 01, 2008 shall remain in respect to pre-2006 retirees and the clarifications issued by OMs dated October 03, 2008, October 14, 2008 and January 28, 2013 whereby the words „the pension of the pensioners who retired prior to 2006 will be reduced pro-rata wherein the pensioner who has less than the maximum required service for full pension as per Rule 49 of CCS (Pension) Rules 1972’ needs to be quashed.

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24. Reverting to the facts of the instant case we find that the respondents have failed to show any nexus between the criteria with the object of the policy. To give benefit of full pension to those who have rendered 20 years service but have retired on or after January 01, 2006 but subject the pensioners who have retired on or before December 31, 2005 to a pro-rata cut in pension unless backed by a reasonableness of the criteria with the object sought to be achieved would render the cut-off date as an arbitrary criteria and thus liable to be quashed. W.P.(C) Nos.8012/2013 & 8056/2013 Page 19 of 19

25. To summarize, the petitioners must succeed on two points. Firstly that the policy decision of the Government in the Office Memorandum dated

September 01, 2008 to fix pension for all category of pensioners did not classify post and pre January 01, 2006 retirees and all were entitled to pension as per a common formula. Under the garb of clarification the Office Memorandum of October 03, 2008 followed by the Office Memorandum dated October 14, 2008 and repeated in the Office Memorandum dated January 28, 2013 the cut-off date was inserted by an officer of the Government having no authority to cut down the beneficial policy decision notified on September 01, 2008. Secondly for the reason the cut-off date is arbitrary and founs Article 14 of the Constitution of India.

26. The writ petitions are allowed. The Office Memorandums introducing the cut-off date and mandating that pre January 01, 2006 pensioners would have their pension fix by pro-rata reducing the same by such numbers of years they have rendered less service than 33 years are quashed. It is declared that the writ petitioners would be entitled to full pension post January 01, 2006 without any pro-rata cut therein. Pension deducted from the petitioners (after it was correctly fixed and paid but later on reduced and hence deductions made) shall be refunded as also the arrears paid within six weeks from today failing which the amount payable would bear simple interest @ 9% per annum reckoned six weeks hereinafter.”

Accordingly, these petitions are allowed. The impugned Office Memorandums, to the extent that they provide that the pension of pre-2006 pensioners would be reduced pro-

rata, where the pensioner had less than the maximum service of 33 years required for full pension are quashed. It is directed that the pay of the petitioners who have retired before 01.01.2006 be brought corresponding to the revised pay scale as per the 6th Central Pay Commission and then it be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the pay band and the grade pay thereon. The respondents are directed to re-fix the pension of the petitioners accordingly and pay the arrears of pension within a period of two months.

December 18, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE