**STATUS OF THE CASES OF PRE 2006 PENSIONERS IN VARIOUS COURTS :**
**AS ON 5.09.2011 (Compiled by Shri M L Kanaujia).**

| S. N. | BEING HEARD BY | PETITION NO. & YEAR OA /WPC | LEAD PETITIONER | NEXT DATE FIXED FOR HEARING | REMARKS. (Details appended below this table) |
|---|---|---|---|---|---|
| 1 | CAT-PB Delhi | OA 3079/2009 | LR Khatana | 28.09.11 | For hearing |
| 2 | CAT-PB Delhi | OA 201/2010 | M L Gulati | 28.09.11 | For hearing |
| 3 | CAT-PB Delhi | OA 306/2010 | D L Vohra | 28.09.11 | For hearing |
| 4 | CAT-PB Delhi | OA 507/2010 | PPS Gambhir | 28.09.11 | For hearing |
| 5 | CAT-PB Delhi | OA 937/2010 | s30 pensioners | 28.09.11 | For hearing |
| 6 | CAT-PB Delhi | OA 2087/2009 | Ran Vir Singh | 28.09.11 | For hearing |
| 7 | CAT-PB Delhi | OA 655/2010 | s29 pensioners | 28.09.2011 | For hearing |
| 8 | CAT-PB Delhi | OA 2101/2010 | CG Pensioners | 28.09.11 | For hearing |
| 9 | CAT Hydrabad | OA 568/2010 | s29 Dr. Kotra | | For hearing |
| 10 | CAT Hydrabad | OA/2010 Clubbed | s26 Dr. Kotra | | For hearing |
| 11 | CAT Hydrabad | OA 2413/2009 | AJ Gurushanker | | For hearing |
| 12 | CATErnakulam | OA 834/2010 | s29 &s26 DRDO | | For hearing |
| 13 | Lucknow HC | Ser.Ben.203/2010 | s29 UP Officers | 21.09.2011 (Likely) | For hearing |
| 14 | Delhi HC | WP(C)3359/2010 | s29,s26 Ex.ParaMil. | 25.10.2011 | For hearing |
| 15 | Haryana HC | CWP19641/2009 | RK Agarwal (s29) | 19.09.2011 | For hearing |
| 16 | Haryana HC | CWP19642/2009 | Satish Bhalla (s29) | | For hearing |
| 17 | Haryana HC | CWP3452/2010 | O P Kapur (s29) | 16.11.2011 | For hearing |
| 18 | Haryana HC | CWP12638/2010 | M L Kansal (s29) | 16.11.2011 | For hearing |
| 19 | Haryana HC | CWP20725/2010 | RK Sehgal (s29) | 16.11.2011 | For hearing |
| 20 | Haryana HC | CWP20726/2010 | R K Bali (s29) | 16.11.2011 | For hearing |
| 21 | Haryana HC | CWP20727/2010 | B K Jain (s29) | 16.11.2011 | For hearing |
| 22 | Haryana HC | CWP20753/2010 | CK Gupta (s29) | 16.11.2011 | For hearing |
| 23 | Supreme Court | WP(Con) 64/2009 | SPS Vains M.Gen. | | For hearing |
| 24 | AFT-PB Delhi | OA 24/2010 | Lt.Com.AvtarSingh | DOJ 14.09.2010 | Appeal allowed. |
| 25 | AFT-PB Delhi | OA 270/2010 | Sq.Ldr. VK Jain | DOJ 14.09.2010 | Appeal allowed. |
| 26 | AFT-PB Delhi | OA 139/2009 | Lt.Col.PK Kapur | DOJ 30.06.10 | Appeal allowed. |
| 27 | AFTChandigarh | OA 277/2010 | Romesh Chand | DOJ 01.11.2010 | Appeal allowed. |
| 28 | AFTChandigarh | OA 312/2010 | OP Singh | DOJ 01.11.2010 | Appeal allowed. |
| 29 | AFTChandigarh | OA 313/2010 | MS Minhas | DOJ 01.11.2010 | Appeal allowed. |
| 30 | AFTChandigarh | OA 314/2010 | YS Nijjar | DOJ 01.11.2010 | Appeal allowed. |
| 31 | AFTChandigarh | OA 325/2010 | Dildar Singh Sahi | DOJ 01.11.2010 | Appeal allowed. |
| 32 | AFTChandigarh | OA 326/2010 | Gurlochan Singh | DOJ 01.11.2010 | Appeal allowed. |
| 32 | AFTChandigarh | OA 327/2010 | Gurmeet Singh | DOJ 01.11.2010 | Appeal |

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| | | | | | **allowed.** |
| **33** | **AFTChandigarh** | **OA 445/2010** | **Balwant Singh** | **DOJ 01.11.2010** | **Appeal allowed.** |
| **34** | **AFTChandigarh** | **OA 476/2010** | **Karam Chand** | **DOJ 01.11.2010** | **Appeal allowed.** |
| **35** | **AFTChandigarh** | **OA 257/2010** | **Jagdish Chandar** | **DOJ 25.11.2010** | **Appeal allowed.** |
| **36** | **AFTChandigarh** | **OA 409/2010** | **N N Sud** | **DOJ 25.11.2010** | **Appeal allowed.** |
| **37** | **AFTChandigarh** | **OA 410/2010** | **HS Tonque** | **DOJ 25.11.2010** | **Appeal allowed.** |
| **38** | **AFTChandigarh** | **OA 521/2010** | **GS Kang** | **DOJ 25.11.2010** | **Appeal allowed.** |
| **39** | **AFTChandigarh** | **OA 522/2010** | **SS Matharu** | **DOJ 25.11.2010** | **Appeal allowed.** |
| **40** | **AFTChandigarh** | **OA 346/2010** | | **DOJ 25.11.2010** | **Appeal allowed.** |
| **41** | **AFTChandigarh** | **OA 728/2010** | | **DOJ 25.11.2010** | **Appeal allowed.** |
| **42** | **AFTChandigarh** | **OA 100/2010** | **SPS Vains M.Gen.** | **DOJ 04.03.2010** | **Appeal allowed.** |
| **43** | **CAT Patna** | **OA 284/2009** | **MMP Sinha** | **DOJ 28.05.2010** | **Appeal Disallowed.** |
| **44** | **CAT-PB Delhi** | **OA 1732 / 2010** | **Ram Murti Raina** | **DOJ 25.05.10** | **Appeal allowed.** |
| **45** | **CAT Mumbai** | **OA 780/2009 + 8** | **Dr. KR Munim** | **DOJ 22.02.2011** | **Appeals Disallowed.** |
| **46** | **HC Patna** | **CWJC10757/2010** | **MMP Sinha, s30** | **22.04.2011** | **Admitted.** |
| **47** | **Supreme Court** | **T.P.(C) No.56/2007** | **UOI & Ors. Vs NK Nair & Ors.** | **22.11.2011** | **Final disposal matter.** |
| **48** | **Supreme Court** | **Civil Appeal 2966/2011** | **UOI Vs SPS Vains** | | **Listing awaited.** |
| **49** | **CAT–PB Delhi** | **OA 1165 /2011** | **Pratap Narain & Ors Vs. MOP/DOP** | **18.10.2011** | **Admitted on 16.05.11** |
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## Detailed Remarks :

**Item 1 to 8 : These cases are being heard all together. Initially, Govt. Counsel took time at several occasions on some pretext or other and gained time. The last hearing 16.03.2011 was fixed with final warning to the Govt. Counsel that no further time would be given and case would be heard straight away. On 16.03.2011 the CAT Mumbai Judgment (DOJ 22.02.2011) was mentioned wherein Pensioners plea of strucking down of cut off date of 1.1.06, point to point fixation of pension and inclusion of NPA while computing revised pension were declared bereft of merit by the CAT Mumbai and case dismissed. Shri Nidehsh Gupta, Advocate of Petitioners, argued that CAT Mumbai case was different than ours where modified parity has been prayed for which was recommended by the SCPC vide para 5.1.47 and which was approved by Union Cabinet and Notified by Govt. vide MOP, DOP&PW Resolution dated 29.08.2008. After hearing, the case was adjourned for next hearing on 13.04.2011. CAT Mumbai case is**

**based on arguments given in hon.ble Supreme Court Judgment of march 2008 in case of Govt. of AP Vs. N. Subbaranayudu. Shri Nidehsh Gupta, Advocate of Petitioners is expected to give his further plea with thread bare examination of CAT Mumbai Judgment as compared to Petitioners case. The case was adjourned on 13.04.11 for 28.04.11 but heard on 29.04.11 and finally heard and it was felt that the issue involved is serious and therefore, decided to be transferred to Full Bench of the CAT-Principal Bench for further hearing on 19.05.11. Presently posted for hearing on 28.9.2011.**

**Item 9 to 10 : Clubbed cases. Details awaited. Dr. Kotra has retuned from foreign tour and now perusing the case. Date of next hearing is not yet known.**

**Item 11 : Govt. Counter was received. Rejoinder was given. Next date of hearing not yet fixed.**

**Item 12 : No further date yet fixed for hearing.**

**Item 13 : This case was listed in Lucknow High Court several times in the past, as per directives given by the Hon.ble Supreme Court, but after hearing, has now been "admitted" on 01.03.2011 with direction that Govt. should submit Counter within two weeks and Petitioners then submit Rejoinder in further two week. On 04.04.11 Hon.ble Devi Prasad Singh J and Hon.ble SC Charausia J ordered : "As prayed by the learned Counsel for the Petitioners, a week's time is allowed to file rejoinder affidavit. "On 04.07.11, following orders were passed by the Hon.ble HC " List on 27.07.2011. As agreed by the parties' counsel, the petition may be heard finally on that date. It shall be open for the parties' counsel to submit chart of dates and events and compilation of case law and written argument on the next date of listing."**
**The case is now listed to be heard on 24.08.2011. Next (Likely) hearing on 21.9.2011.**

**Item 14. On 01.04.11, Govt. Advocate dealing with the case, failed to turn up. Instead a new Govt. Advocate turned up and informed that the earlier one has become member of some tribunal and he would now not be able to come back. The new Advocate then, sought the time to study the case. New date fixed is 07.07.11. Heard on 07.-7.11 when once gain Govt. Advocate wanted more time to submit Counter. Pensioner's Advocate Shri Prashant Bhushan then pointed out that an years time has passed and Govt. is all the time avoiding submission of Counter and therefore, no further time should be given. The Court took this point seriously and fixed next date too, early on 12.07.11, directing the Govt. Advocate to submit the Counter definitely by that date. Case was heard on 12.07.11 but again Govt. Advocate failed to submit Counter and asked for time. Hon.ble Court was not happy at all but eventually allowed final four weeks time and fixed next date 11.08.2011 for hearing. Govt. again did not submit Counter. The hon.ble Court wanted arguments to be started but in absence of senior Advocates from both sides, arguments could not be started The case is now adjourned to 25.10.2011.**

**Item 15 to 16 : Argument already started and would continue in next hearing onwards. Next date fixed for hearing is 19.09.2011**

**Item 17 to 22 : Govt. Counter has been received. Petitioners are yet to submit Rejoinder. Petitioners are expected to submit Rejoinder in a few week time. Next date fixed for hearing is 16.11.2011.**

**Item 23 : This is Contempt Writ Petition from Pensioners SPS Vains and Ors. The matter was listed 9 times earlier. There are no further orders for listing yet.**

**Items 24 and 25 : These cases pertain to pre 2006 Rtd. Majors, Sqd. Ldrs. and Lt. Com. from three wings of Defence Forces. Their appeal was "allowed with direction to respondents i. e. UOI to fix/refix the pension of all the petitioners on the basis of minimum of the pay in pay band i.e. Rs. 23,810/- and release all other benefits to them within four months from the date of receipt of this order ." As per latest information Govt. has submitted an SLP in Supreme Court and Pensioners, too have submitted a**

**CAVEAT petition. Case would be heard first for "admission". No listing/No date of hearing fixed yet. by the hon.ble Supreme Court.**

**Item 26 : Disability Pension allowed without cut off date of 01.01.2006 equally to all pensioners.**

**Items 27 to 42 : Appeal allowed by the AFT with direction to Govt. to fix revise pension and arrange payment giving 4 months time. No further progress is known.**

**Item 43 : Shri MMP Sinha, a pre 2006 retiree from s30 p.r.p.s., petitioned CAT Patna for fixation of his revised pension on the basis of SCPC modified parity i.e. at 50 % of sum of minimum of the pay in pay band plus grade pay corresponding to pre revised pay scale from which a pensioner had retired. In the meanwhile, based on recommendation of COS Report, s30 p.r.p.s. was taken out of pay band 4 and against it was allotted a new revised pay scale, re-fixing pension of pre 2006 retirees at 33500. Shri Sinha than modified his prayer asking for fixation of revised pension on point to point basis without any regard to cut off date of 1.1.06. He further prayed that his pension be fixed at equal to or higher than the maximum of revised pension a post 2006 retiree of s29 p.r.p.s. was fixed at, on the ground that the s30 p.r.p.s. was here than s29 p.r.p.s. and therefore, a junior cannot get higher pension than a senior. Petitioners prayers were disallowed on the ground (1) Application of Cut Off date is not a new phenomenon and it has been applied in several cases far last 27 years even after DS Nakara Judgment came (2) An s29 retiree would not be able to reach maximum of pay band 4 i.e. 67000 because, promote officers in s29 being at fag end of their service would retire soon, direct recruits would get promoted to s30/equivalent revised pay scale, both even not reaching middle of pay band 4 Rs. 37,400 -67000.**

**Item 44 : Shri Ram Murti Raina, an s30 retiree, petitioned that his application for higher pension @ 38500 (instead of 33500 already fixed) on the basis of point to point fixation without any regard to cut off date of 1.1.06 should be forwarded by Railway Board to DOP for action. His appeal was allowed accordingly. Nothing further is known about this case.**

**Item 45 : Dr. Munim petitioned that their pension should be fixed without having any regard to cut off date of 1.1.06 and while doing so , the NPA (Non practicing allowance paid to Doctors) should also be included. The CAT Mumbai dismissed this position on the ground that both the demands are bereft of any merit. CAT Mumbai Judgment has observed :**

> ***18. The applicants could have complained of discrimination only if a benefit had been introduced retrospectively by fixing a cut-off date arbitrarily; thereby dividing a single homogeneous class into two groups and subjecting them to different treatments. That is not the case here. The date 01.01.2006 for extending the benefit of pay revision has been fixed by expert body like the Pay Commission. In a catena of decisions, the Hon'ble Apex Court has held that the date is fixed by the executive authorities keeping in view the economic conditions, financial constraints and many administrative and other attending circumstances and, therefore, it is expected from Courts/Tribunals to exercise and maintain judicial restraint in matters relating to legislative and executive domain. In this context, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of Government of Andhra Pradesh & others Vs. N.Subbarayudu & others, [2008 (4) SLR 136], relevant paras of which are quoted below - 5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. 6. No doubt in D.S.Nakara & others Vs. Union of India, 1983 (1) SCC 305, this Court had struck down the cut off date in***

***connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's case (supra).¶***

***19. In N. Subbarayudu (supra), the Hon'ble Supreme Court was dealing with the case of Lecturers in Private College. The age for superannuation was reduced from 60 to 58 years by amendment of the Education Code in 1993. Some retiree Lecturers preferred a Writ Petition challenging the cut-off date 01.11.1992 fixed by the Government for the purpose of pension as arbitrary and discriminatory. The Hon'ble High Court allowed the Writ Petition and on being challenged the same before Hon'ble Supreme Court, the judgment of Hon'ble High Court was reversed.***

***19.1 It is evident from the reading of above paras 5 and 6 of the judgment of Hon'ble Supreme Court in N. Subbarayudu that in the ordinary course the Tribunal shall not interfere in the matter of a cut-off date unless the applicants make out a case of glaring discrimination and violation of the principle of equality as envisaged under Articles 14 and 16 of the Constitution of India. It is also evident from the said judgment of the Hon'ble Supreme Court that rigidity of the ratio of D.S. Nakara (Supra) has been considerably diluted in a catena of subsequent judgments by Hon'ble Supreme Court itself. Therefore, the Tribunal has to maintain judicial restraint in matters relating to the legislative or executive domain.***

***20. Furthermore, the provisions of the CCS (Pension) Rules are rank-neutral and class-neutral. In cases of all the retirees, pension is basically determined as per the provisions of Rule 49 of the CCS Pension Rules read with the provisions of Rules 33 and 34 thereof which have been reproduced above. That has been done in the case of the applicants. As such there is no case of any discrimination. Also, there is no provision in the Pension Rules for extending the benefit of pay revision retrospectively and, hence, the pay revision which has become effective from 01.01.2006 cannot be ipso facto and in toto made applicable to the present applicants, who have retired prior to 01.01.2006.***

***22. In fact, as discussed hereinabove, several decisions of the Hon'ble Apex Court have gone to the extent of saying that whenever the Government or an authority frames a Scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the date of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut off date, cannot be held to be unreasonable and irrational in the light of Article 14 of the Constitution. It is neither arbitrary nor discriminatory. It shall not amount to 'picking out a date from the hat'. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government.***

**Item 46 : This petition is against judgment of CAT/ Patna mentioned in Item 43 above. Shri MMP Sinha, who pleads his own case, has now gone in appeal to Patna High Court against CAT patna judgment. The CAT Patna Judgment that cut off date is being applied for last 27 years, even after DS Nakara Judgment and there it could be applied every where is not at all correct. Application of cut off date to divide a homogenous group of pensioners covered by same liberalised and upgraded pension scheme for the purpose giving benefit of revised pension discriminatingly, is violative of Article 14 and law set by DS Nakara Judgment constitutional bench of hon.ble Supreme Court and several other Judgments of hon.ble Supreme Court, such BJ Akkra Case (DJ 10.10.06), SPS Vains (DJ 8.9.08) and KJS Buttar (DJ 31.03.11). The second ground that neither a promotee nor a direct recruit s29 Officer would reach even middle of Pay Band 4 i. e. 37,400-67,000, is a presumption. If none of the s29 p.r.p.s. retiree when in PB 4 would reach 67,000 as pay band pay, none of s30 p.r.p.s. retiree while in revised pay scale, would get higher pension. It however, opposite of it happens, which is not unlikely, than would not injustice violation of Article 14 prevail, for which situation CAT Patna has not taken care of, while delivering the Judgment. Appeal of Shri SPS Sinha has been admitted on 25.03.2011. Govt.**

**Counter is awaited. Case came up for hearing on 22.04.11 when hon.ble Justice T. Meena Kumari and Justice Akhilesh Chandra ordered : "Let the matter be listed before appropriate Bench for hearing after taking due permission of Hon'ble the Chief Justice."**

**Item 47 : COURT NO. 12; HON'BLE MR. JUSTICE AFTAB ALAM, HON'BLE MR. JUSTICE R.M. LODHA. PART-A MISCELLANEOUS MATTERS I.A., CMPS, CRLMPS ETC 43. I. A. NO. 9 IN T.P.(C) No.56/2007, UNION OF INDIA & ORS. MR. D.S. MAHRA XVIA A/N-H Vs. N.K. NAIR & ORS. GP.CAPT.KARAN SINGH BHATI 106, 0, 0 S.(1801) (FOR MODIFICATION / DIRECTION MR. VISHWA PAL SINGH OF RECALL THE ORDER DATED MR. AJAY KUMAR 08.03.2010 AND OFFICE REPORT) (FOR FINAL DISPOSAL ) NOT TO BE LISTED BEFORE : 95, 0, 0 WITH I.A.NO.1 IN W.P (C) No.34/2009 K.K. ROHTAGI & ORS. MR. PRAVEEN JAIN X ADJD-O Vs. UNION OF INDIA & ORS. PETITIONER-IN-PERSON 95,106, 0 S.(3900) (FOR DIRECTION) (FOR FINAL DISPOSAL ) PART-B FINAL DISPOSAL MATTERS.**
**The case had come up for hearing on 25 Apr 2011 in the court of Justice Aftab Alam & Justice RM Lodha. The UOI have filed the affidivit as asked by the court. The Solicitor General was not available for presenting the case as he was busy with a case in another court. The case has been now listed for 06 May 2011.**

**Item 48 : This is Civil Appeal from Petitioner UOI through Defence Secretary and Ors Vs Respondent SPS Vains & Ors. Matter was listed two times earlier. This appears to be the Civil Appeal against AFT/Chandigar Judgment given in OA No. 100 of 2010 (see item 42 above) but it is not yet confirmed. There are no orders for further listing yet.**

**49 : This case is basically for full pension for pre 2006 pensioners as in case of post 2006 pensioners, who retired with more than 20 but less than 33 years of qualifying service. The case was listed and heard on 16.05.11 and ordered for issue of notices to the respondents. Next hearing took place on 29.07.11. Next Hearing will take place on 18.10.2011.**

**As compiled by Shri M L Kanaujia (with updation by NSR)**