

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

15

O.A. NO. 753/2002

WITH

O.A. NO. 1602/2002 & O.A. NO. 1183/2002

New Delhi, this the 28th day of April, 2003

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

S.No.	Name	Age	Designation
1.	Y.B.L.Mathur S/o B.B.Lal	73	Retired G.Ms from N.E.Railway, Gorakhpur
2.	Ramesh Chand Sethi S/o J.R.Sethi	69	D.L.W.Varanasi
3.	Kuldip Narain S/o Dr.Prahlad Naraub	72	I.C.F., Chennai
4.	Vijay Singh S/o Ripu Sudan Singh	71	Central Railway, Mumbai
5.	Gauri Shankar S/o Harsumaran Lal	70	N.E.Rly.Gorakhpur
6.	A.S.Agarwal S/o J.P.Agarwal	71	Metro Railway
7.	Raj Kumar Vir S/o Ish Kumar	72	C.L.W., Chittaranjan
8.	Mahesh Kumar Modwel S/o K.P.Modwel	75	D.G., RDSO, Lucknow
9.	Lajpat Rai Gosain S/o Bhagwan Dass Gosain	80	I.C.F.Chennai
10.	R.C.Tondon S/o R.R.M.Tondon	74	I.C.F.Chennai
11.	Pramod Kumar S/o R.R.M.Tondon	66	D.L.W.Varanasi
12.	Amar Nath Wanchoo S/o Kailash Nath Wanchoo	72	Northern Railway, N.Delhi
13.	Satish Behl S/o Mohan Lal Behl	70	G.M., I.C.F.Chennai
14.	S.K.Datta S/o Dr.G.L.Datta	73	Northern Railway, N.Delhi
15.	Dilraj Singh S/o Shri Tajinder Singh	76	D.L.W.Varanasi
16.	Hrusgugusg Bandopadhyay S/o Vishnu Bandopadhyay	76	Eastern Rly.Kolkata

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17.	C.M.Malik S/o Bodh Raj Malik	75	S.C.Rly. Secunderabad
18.	Naubat Lal S/o Bishamber Dayal	65	G.M.W.A.P., Bangalore
19.	Himangsu S.Sinha S/o Late Haridhan Sinha	74	Metro Railway Kolkata
20.	Jawahar Lal Kaul S/o L Prem Lal Kaul	66	Metro Railway Kolkata
21.	D.N.Singh S/o Late Kalp Nath Singh	69	O.G., RDSO, Lucknow
22.	M.S.D.Jetly S/o S.R.Jetley	77	G.M.W.A.P., Bangalore
23.	K.Vishwanathan S/o Late R.Krishnamurthi Iyer	73	Southern Rly.Chennai
24.	A.Ramji S/o J.Amrithalingam	74	S.E.Rly. Kolkata
25.	P.V.Narayana Swamy S/o Late Dr.P.N.V.Iyer	78	Metro Railway Kolkata
26.	K.N.Das Gupta S/o Late Ram Narayan Das Gupta	75	Metro Railway Kolkata
27.	Kameshwaran Ramkrishnan S/o Suryamoorthy Kameswaran	68	N.E.F.Guwahati
28.	S.M.Vaish S/o Mitthan Lal Vaish	69	Northern Railway, N.Delhi
29.	A.L.Kochhar S/o Late K.R.Kochhar	85	G.M.C.L.W., Chittaranjan
30.	Madan Mohan Lal Sharma S/o Late Kundan Lal Sharma	67	S.C.Rly. Secunderabad
31.	R.Srinivasan S/o N.Raghavachari	77	Northern Railway, N.Delhi
32.	P.V.Vaitheeswaran S/o P.V.Vishwanathan	66	Western Railway Mumbai
33.	Parandur Kadambi Srinivasan S/o Parandur Bhashyam	72	S.C.Rly. Secunderabad
34.	R.Balasubramanian S/o V.Ragunatha Iyer	68	Metro Railway Kolkata
35.	M.C.Das S/o Sri MM.Parankusa Das	68	G.M.W.A.P., Bangalore
36.	S.H.Babu S/o S.Venkata Subbayya	67	Southern Railway Chennai
37.	Ishwarbhai Amin S/o D.T.Amin	68	G.M.I.C.F.Chennai

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38.	K. Subramahmanyam S/o K.S.Krishnamurthy Iyer	69	Western Railway Mumbai
39.	R. Narasimhan S/o Late Justice N.R. Ayyangar	68	Southern Railway Chennai
40.	M.H. Balakrishnan S/o M.K. Hariharan	64	G.M.I.C.F. Chennai
41.	Raj Kumar Shukla S/o L.B.L. Shukla	64	Southern Rly Chennai
42.	V. Ramaswamy S/o R. Venkateswar	70	CORE, Allahabad U.P.
43.	Tej Singh Vardya S/o B.K. Vardya	74	D.G., RDSO, Lucknow
44.	Satyendra Nath Mahant S/o J.N. Mahant	69	G.M., I.C.F. Chennai
45.	Balkrishna Trimbak Bhide S/o Trimbak Hari Bhide	66	G.M., I.C.F. Chennai
46.	B.V. Rama Rao S/o B.V. Narasimhan	69	Principal Rly College Vadodata
47.	Satya Mitra Bhargava S/o L.Dr. Ram Chandra Bhargava	71	G.M., D.L.W. Varanasi
48.	Gopal Keshav Limaye S/o Keshav Ganesh Limaye	73	Western Rly Mumbai
49.	Dattaraya Purushottam Joshi S/o L.Purushottam Dinkar Joshi	66	CORE, Allahabad U.P.
50.	Jagdish Chandra S/o J.P. Bhatnagar	69	CORE, Allahabad U.P.
51.	T.M. Thomas S/o L.K.U. Mathew	78	Souther Rly Chennai
52.	M.A. Cherian S/o Late M.C. Abraham	70	S.C.Rly. Secunderabad
53.	H.S. Kapoor S/o Late Mahabir Prasad Kapoor	76	GM, WAP, Bangalore
54.	H.P. Mittal S/o Late B.P. Mittal	65	D.G., RDSO, Lucknow
55.	Anant Annaji Hattangadi S/o Annaji Mangesh Bhatt	74	GM, CLW, Chittaranjan
56.	Govind Narayan Phadke S/o Narayan Hari Phadke	67	G.M., N.E.F. Rly. Guwahati
57.	D.P.S. Ahuja S/o Late B.S. Ahuja	68	G.M., N.F. Fly, Gwahati
58.	N.A.P.S. Rao S/o Late Sh. N.S. Anantha Rao	69	G.M., W.A.P., Bangalore

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59.	Lalji Singh S/o Sh. Sinhasan Singh	80	G.M., North Eastern Rly. Gorakhpur
60.	D.C. Misra S/o Sh. D.C. Misra	66	G.M., S.C. Railways, Secunderabad
61.	O.P. Jain S/o Sh. Laxmi Chand Jain	67	Director General, R.D.S.O., Lucknow
62.	R.K. Sharma S/o Late Sh. H.L. Sharma	65	GM, C.L.W., Chittaranjan
63.	Mrs. Kaushalya Singh W/o Late Shri R.P. Singh	71	G.M., S.E. Rly., Kolkata
64.	Mrs. Teena Khosla W/o Late M.K. Khosla	69	G.M., Northern Rly. N. Delhi
65.	Mrs. Sheila Singh W/o Late B.P. Singh	62	Principal Rly. Staff College, Vadodra Applicants

(By Advocate : Shri B.S. Maine)

Versus

Union of India : Through

1. The Secretary,
Railway Board,
Ministry of Railway,
Rail Bhawan, New Delhi - 110 001

2. The Secretary,
Ministry of Personnel, Public Grievances,
And Pensions,
Dept. of Pension & Pensioners' Welfare,
North Block, New Delhi

(By Advocate : Shri V.S.R. Krishna)

..... Respondents

Q.A.1602/2002 :

1. Dr. B.N. Sinha, 64 Yrs.
S/o Late Sh. Brajendra Prasad
Retd. Director General, Railway Health
Services, Min. of Railways,
R/o 205 Anupam Aprts.
East Arjun Nagar, Delhi

2. Dr. P.C. Bhalla, 76 years,
S/o Late Shri D. Tara Chan,
Retd. D.G., Railway Health Services,
Min. of Railways,
B-127, Anand Vihar, Delhi - 110 092

3. Dr. M.C. Khorwal, 73 years,
S/o Late Shri Nandi Lal,
Retd. D.G., R.H.S.
Ministry of Railways,
157/1, Basant Lane,
New Delhi - 55

4. Dr. V.D. Mathur, 65 years.,
S/o Late Shri Ratan Chand Mathur,

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D.G. (Retd), R.H.S.
 Min. of Railways, Ankur B-1008,
 Link Road, Mumbai
 Applicants
 (By Advocate : Shri B.S. Maine)

Versus

Union of India : Through

1. The Secretary,
 Railway Board,
 Ministry of Railway,
 Rail Bhawan, New Delhi - 110 001
2. The Secretary,
 Ministry of Personnel, Public Grievances,
 And Pensions,
 Deptt. of Pension & Pensioners' Welfare,
 North Block, New Delhi

.... Respondents
 (By Advocate : Shri V.S.R. Krishna)

O.A. 1183/2002 :

Dr. J.K. Chaudhry,
 Retd. Director General,
 Railway Health Services,
 Ministry of Railways,
 R/o A-23, Hill View Apartment,
 Vasant Vihar, New Delhi - 110 057

.... Applicant
 (By Applicant in person)

Versus

Union of India : Through

1. The Secretary,
 Railway Board,
 Ministry of Railway,
 Rail Bhawan, New Delhi - 110 001

.... Respondent
 (By Advocate : Shri V.S.R. Krishna)

ORDERBy Govindan S. Tampi, Member (A) :

This order seeks to dispose of three OAs seeking identical reliefs. They were also argued together.

2. Heard Shri B.S. Maine, learned counsel for the applicants in OA 753/2002 and OA 1602/2002. Applicant, Dr. J.K. Chaudhary, appeared in person in OA No. 1183/2002.

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Shri V.S.R. Krishna, learned counsel appeared on behalf of respondents in all the OAs.

3. For the sake of convenience, only the facts and pleas raised in OA No. 753/2002 filed by Shri Y.B.L. Mathur and 64 others are enumerated below as they represent the relative positions in all the OAs.

4. Sixty two of the applicants in this OA are those who had retired as General Managers of Railways or who had held equivalent posts at the time of their superannuation while three are widows of such officers. The pay scale of General Managers before the acceptance of the Fifth Central Pay Commission's recommendations stood at Rs. 7,300-8000/- and all of them were drawing pay and allowances in the said scale, at the time of retirement. All the applicants had also retired prior to 1.1.1996. According to the accepted recommendations of the Fifth Central Pay Commission, the consolidated pension of Officers who had retired prior to 1.1.1996 was to be stepped up to 50% of the minimum of the Revised Pay Scale of the Post which were held by the pensioners at the time of their retirement on superannuation. The Nodal Organisation, Department of Pensions and Pensioners Welfare (DOP&PW) had vide their communication the above and had further held that if the pension worked out was less than 50% of the minimum of the revised scale it had to be stepped up to the said levels. Following the above, Railway Board issued Notification No. F(E)III/98/PNI/99 dated 15.1.1999 prescribing that w.e.f. 1.1.1996 pension of all pensioners, irrespective of their date of retirement shall not be less than 50% of the

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minimum pay in the Revised Scale of Pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner/deceased Govt. servant. Similarly, family pension of the deceased Govt. servant shall not be less than 30% of the minimum of pay in the revised pay scale w.e.f. the date the post held. Accordingly, pension of applicants was worked out at 50% of Rs.22,400-26,000/- which was the replacement scale of Rs.7300-8000/-. In fact, the Fifth Central Pay Commission had recommended the upgradation of the pay of scale of General Managers to Rs.7600-8000/- in present terms, which was accepted by the Government and the General Managers were placed in the higher scale which was revised to Rs. 24,050-26,000/-, the relevant replacement scale w.e.f. 1.1.1996. All the General Managers were given the upgraded scale of Rs.7600-8000/- and were granted the higher scale w.e.f. 1.1.1996. Following this, (General Manager) pensioners were granted pension/family pension corresponding to the scale of Rs.24,050-26,000/- in terms of Notification No. F(E)III/99/PNI/20 dated 9.9.1999. However, on 1.10.2001 the Railway Board issued a clarificatory Circular No.F(E)III/99 /PNI/20, in terms of which a clarification was issued on the actual connotation of the word "post" held by the Railway servants. In terms of this clarification, pension/family pension as on 1.1.1996 of pre-1996 retired/deceased Railway servants shall not be less than 50%/30% of the minimum of the corresponding scale of pay introduced w.e.f. 1.1.1996 for the scale of pay held by railway servants at the time of retirement/death while in service. *Suo moto* revision of pension/family pension was also directed, advising the pensioners to refund the amounts received by them in

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excess. The aforesaid circular letter of the Railway Board was illegal, arbitrary and discriminatory and was in direct violation of the recommendations of the Fifth Central Pay Commission duly accepted by the Govt. Not only was the said decision bad on merits, but it was also perverse being in violation of the principles of natural justice as the concerned staff has not been put on notice. This meant that pensions/family pensions were being sought to be drastically reduced in an arbitrary fashion, leading to the filing of a few OAs whereunder the recovery of alleged excess amount was held back. The OAs were disposed with direction to the respondents to consider and decide upon the representations which were filed by the applicants. Representations, accordingly filed, were rejected on 21.2.2002. No reply has been filed by respondents (DP&PW), but the Railway Ministry has explained that they had acted in terms of the rules correctly and nothing much remained to be done.

5. Grounds raised in this OA are as below:

- (i) The orders are in direct violation of Rule 90 of Railway Servants (Pension) Rules, 1993 which provides that "pension once sanctioned after the final assessment shall not be revised to the dis-advantage of the railway servant unless such revision becomes necessary on account of detection of a clerical error", which is not the case in the present scenario.
- (ii) That Railway Board's Circular dated 1.10.2001 was a clarification on the earlier

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Notification of 15.1.1999 was incorrect as Notification of 15.1.1999 was issued by the President which in unambiguous terms refers to the 'POST' last held by the pensioner. The term 'post' cannot, even by stretch of imagination, be interpreted as is being sought to be done by the respondents. 'POST' and 'replacement scale of pay' are two distinct concepts and they cannot be mixed up.

(iii) The respondents have failed to appreciate that the Fifth Pay Commission had decided to upgrade the pay scale of General Managers from Rs.7300-8000/- in 'present terms' and therefore, the pay scale was revised to Rs.24,050-26000/- and the pension to be worked out accordingly.

(iv) The basic rule was that pension of the pensioners on the date of their retirement shall not be less than 50% of the minimum of the revised pay of the 'POST' held by the pensioners. Whenever any scale is introduced that follows the post. All the applicants were General Managers at the time of their retirement and therefore with the upgradation, replacement scale changed.

(v) Rule cannot be dislodged by way of misplaced clarification.

(vi) The Notification dated 15.1.1999 issued by the President was being sought to be revised

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and that too without any logic by an administrative order.

(vii) The new formula which is being sought to be introduced by the respondent cannot adversely affect the pensioners whose pensions have been sanctioned after final assessment.

(viii) The respondents' action was deliberately intended to bring in disparity between the retirees prior to 1.1.1996 and those who have retired after 1.1.1996, thus discriminating the earlier retirees.

(ix) The interpretation sought to be placed on record by the respondents is detrimental to the cause of the applicants.

(x) The pension already sanctioned is sacrosanct and cannot be reduced giving rise to unnecessary suffering and to fall in the standards of living to those in the evening of their lives. It also goes against the principle of legitimate expectations.// The OA in the circumstances should succeed with full relief to them is their plea.

6. Recovery of the excess payment ordered has been kept in abeyance by the interim order of 20.3.2002.

7.1 OA No.1183/2002 is filed by Dr. J.K. Chaudhary, who had retired as Director General, Railway Health Services, in a rank equivalent to General Managers in whose case the scale of pay of Rs.7300-8000/- was upgraded to

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Rs.8000/- fixed, before the 5th CPC recommendations were adopted, but after his retirement. Pleas raised by him are similar to what has been raised in OA 753/2002.

7.2. OA 1602/2002 is filed by four Doctors, who had also retired as Directors General, Railway Health Services, like Dr. Chaudhary above. Needless to say, the pleas raised by them follow the pattern of pleas in OAs 753/2002 and 1183/2002.

8. In the detailed counter affidavit filed by the respondents, the pleas raised by the applicants are strongly rebutted. It is pointed out that in terms of Govt. of India (Allocation of Business) Rules, 1961, Department of Pension & Pensioners' Welfare (DOP&PW) in the Ministry of Personnel, Public Grievances and Pensions is the nodal Organisation responsible for formulation of policy and coordination of matters relating to retirement benefits to all Central Govt. employees including Railway employees. During the course of implementation of the recommendations of the Fifth Pay Commission, DOP&PW issued OM No.45/10/98- P&PW (A) dated 17.12.1998, authorising stepping up of pension/family pension of all the pensioners irrespective of the date of retirement to 50%/30% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 for the 'POST' last held by the pensioner/deceased Railway servant. Railway Board's Circular No. F(E)III/98/PNI/29 dated 15.1.1999 was accordingly issued. Keeping in mind the above, the officers of the rank of General Manager of the Zonal Railways, Production Units etc. were given the higher scale of Rs.7300-8000/- and the

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relevant replacement scale of Rs.24,050-26,000/- w.e.f. 1.1.1996. Accordingly, pensions were increased under Railway Board's letter No.F(E)III/99/PNI/20 dated 9.9.1999. Following this a confusion arose in the interpretation of the term "post last held". A clarificatory OM No. 45/86/97-P&PW(A) (Pt.) dated 11.5.2001 was issued showing the actual connotation of the "post last held" as to mean that stepping up of pension/family pension upto 50%/30% of the minimum of the corresponding scale of pay with reference to the scale of pay of the post held by the pensioner at the time of retirement. Therefore, the corresponding scale of pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner appearing in para 1 of the OM dated 17.12.1998 shall mean the scale of pay held by the pensioner at the time of retirement/ death while in service. In terms of the Railway Board's letter No.PC-V/97/I/RSRP/7 dated 16.10.1997 General Manager level officers were given the higher scale of Rs.7300-8000/-, and revised scale of Rs.24,050-26,000/-, Accordingly, pensions were re-worked. Following DOP&PW's OM dated 11.5.2001, clarificatory instructions were issued by the Railway Board vide their letter No. F(E)III/99/PNI/20 dated 20.8.2001 whereunder enhanced pension granted in terms of letter dated 9.9.1999 was ordered to be withdrawn which has led the applicants to come to the Tribunal. Respondents point out that steps were also taken to revise the scale of pay and to recover the amount paid in excess. This recovery did not attract provisions of Rule 90 of Railway Services (Pension) Rules, 1993 as the basic pension/family pension sanctioned at the time of retirement and subsequently consolidated w.e.f. 1.1.1986 and 1.1.1996 did not at all

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get reduced. They were originally granted pension at the scale of pay of Rs.22400-26000/- which was stepped up due to wrong interpretation of DOP&PW's OM dated 17.12.1998. The same had to be corrected. This correction would apply not only to General Managers but to various classes of people who have all been given higher pensions in the wrong manner. The Railway Board had issued a speaking order on 21.02.2002 to all the Railway Pensioners after consulting the DOP&PW and, therefore, no separate order from DOP&PW was called for. The higher replacement scale of Rs.22400-26000/- was applicable only to those who were in position or retired thereafter. Since complete parity to all pensioners as on 1.1.1996 was not envisaged by the Fifth Central Pay Commission who decided to bring in modified parity of pre-1996 pensioners and family pensioners by stepping up the consolidated pension/family pension to 50% and 30% respectively of the minimum replacement pay of the scale held by the retiree at the time of retirement/death while in service. This was the only proper step to have been taken. The Railway Board's earlier letter dated 9.9.1999 was issued on the erroneous interpretation of DOP&PW's OM dated 17.12.1998 and the same had to be rectified. DOP&PW's OM dated 11.5.2001 had clarified the actual connotation of the word 'POST' to mean that it shall relate to the corresponding scale of pay held by the persons concerned at the time of retirement. Therefore, General Managers who had retired were entitled for pension worked out at Rs.22,400-26,000/-. This is the only correct interpretation which could have been adopted and the applicants cannot have any grievance on that. The directions were neither discriminatory nor in violation of

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the principles of natural justice. These apply not only to General Manager level officers but to all others across the board who have been given the higher scale/pension wrongly. Speaking order dated 21.2.2002 has been passed by the Secretary, Railway Board, after consulting DOP&PW, the Nodal Organisation, and in terms of the Tribunal's order. Recovery of over payment did not attract provisions of Rule 90 of Railway Service Pension Rules as the amounts sanctioned w.e.f. 1.1.1986 and 1.1.1996 have not been reduced. The recommendations of the Fifth Central Pay Commission were to bring about complete parity between the pensioners of pre and post-1986 post-1986 and to extend modified parity with pre-1996 pensioners. This has been achieved by the DOP&PW's instructions. The applicants cannot seek that they should be granted a higher replacement scale of Rs.24050-26000/- as the same was available only for those who were in service and retired on or after 1.1.1996. As the pre-1996 pensioners had drawn their pay and allowances only in the scale of Rs.7300-8000/- they could seek pension only in a level corresponding to the said scale. With regard to the applicants' charge that the amount of pension/family pension finally assessed and sanctioned at the time of retirement had been reduced to their dis-advantage inspite of it not being due to any clerical error, the respondents pointed out that the same was not being reduced but only the excess amount of pension which was paid as a result of wrong stepping up was ordered to be recovered. This has been confirmed by the Tribunal also in OA No.1647/2000. This being the case, the applicants are entitled to have heir pension/family pension fixed at 50%/30% of the minimum

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pay in the corresponding replacement scales of pay. Any amount received in excess was liable to be refunded and corrected too. OA, therefore, deserves to be dismissed, argue the respondents.

9. During the oral submissions, Shri B.S. Mainee, learned counsel appearing on behalf of applicants pointed out that DOP&PW's OM dated 17.12.1998 had held that pension/family pension shall not be less than 50%/30% of the minimum of the scale of pay of the Post last held by the pensioner. It is in terms of this the Railway Board had issued a Presidential order on 9.9.1999 revising the pension of the Officers including the applicants. As the pay of the General Manager level officers stood upgraded to Rs.7600-8000/- the proper replacement scale of Rs.24,050-26,000/- and the pension case to be recalculated/refixed accordingly. This was the ^{only} proper and correct step to have been taken. Once this has been done, the final assessment of pension had come into force and no reduction therein could have been made except on a clerical error noticed subsequently. In the present case there was no clerical error. According to Shri B.S. Mainee, the word "post" cannot in any way be interpreted as scale of pay as the respondents appear to think. What the applicants were entitled to as pension/family pension was 50%/30% of the minimum of the scale of the higher pay scale given to those holding the post as on 1.1.1996 i.e. Rs.24,050-26,000/-. The clarification issued by the DOP&PW on 11.5.2001 and adopted by the Railway Board was a new order and could be only prospective in nature if at all and therefore, the respondents have acted in-correctly while

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reducing the pension retrospectively. Even if the clarification was legal the same could not have been adopted in the present set of cases and, therefore, the action of the respondents called for interference. Shri Maine also referred to the decision of the Hon'ble Supreme Court in the case of Shri R.K. Sabharwal (1995 (3) SCC 227) in support of his contentions.

10. Shri B.S. Maine's submissions were adopted and endorsed by Dr. J.K. Chaudhary, applicant in OA No. 1183/2002, who stated that the order/opinion of the Hon'ble Prime Minister cannot be taken as sufficient enough to warrant a change in the law, which had the effect of adversely affecting the financial interests of staff. When Shri Maine's attention was specifically drawn to the decisions of this Bench of the Tribunal in OAs 480/2001 filed by S.C. Parashar and OA 2012/2001 filed by A.S. Rao, he pointed out that the said decision would not come in the way of his clients as the Tribunal had held the clarifications to be only prospective which was the basis of his arguments as well. He has stated that the modification/reduction ordered in the pension of the officers on a later date retrospectively has no sanction in law and should be set aside.

11. Shri B.S. Maine also pointed out that the decision of the Tribunal denying the benefit of inclusion of non-practicing allowance after the Fifth Pay Commission's recommendations were adopted, had been set aside by the Hon'ble High Court of Delhi on 15.5.2002 in CWP No. 7322 of 2001 and connection matters. The same

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also should come in favour of the present applicants, he pleads.

12. On behalf of the respondents Shri V.S.R. Krishna, learned counsel, pointed out that while adopting the recommendations of the Fifth Pay Commission, the Government had brought about total parity in respect of the retirees who had superannuated before 1.1.1986 and modified parity thereafter. This ensured that all the retirees, irrespective of their date of superannuation, became entitled to grant of pension/family pension worked at the rates of 50%/30% of the minimum of the scale of pay of the post last held. It was also decided that while arriving at the consolidated pension, if the said pension was less than the above 50%/30%, it should be stepped up to that level. Accordingly, all the applicants who were working as General Manager level officers at the time of their retirement or death in harness and drawing the scale of pay of Rs.7300-8000/- were granted pension keeping in mind the replacement scale of Rs.22,400-26,000/-. It was only thereafter the Fifth Pay Commission's recommendations contained in Para 83.71 of the report came to be adopted and those working as General Managers were given the pay scale of Rs.7600-8000/- "in the present terms". This expression "present terms" correctly meant that only those who were working as General Managers on the date were actually entitled to the same. And only this interpretation was possible. However, on the basis of a wrong interpretation adopted by the Railway Board of DOP&PW's OM dated 17.12.1998, in their letter dated 9.9.1999, those who had retired without drawing pay in the

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scale of Rs.7600-8000/- like the applicants were also given the benefit of pension worked followed by the Railways. This cannot be disturbed pleads Shri Krishna. Shri Krishna relied upon the decisions of this Tribunal in OAs Nos.480/2001 and 2012/2001 referred to above. He also informed us that the UOI had filed SLP against the decision of the Hon'ble Delhi High Court allowing the SLP in the case of Doctors, claiming non-practicing allowance and, therefore, no law can be described as settled in the matter.

13. We have carefully deliberated upon the rival contentions and perused the documents brought on record. Facts are not under dispute. All the applicants before us~ i.e., 65 persons in OA 753/2002, one person in OA 1183/2002 and four persons in OA 1602/2002 are officers who have retired from Indian Railways before 1-1-96, the day the accepted recommendations of the 5th Central Pay Commission were made effective from. All those in OA 753/2002 were holding General Manager level posts while those in OA 1183/2002 as well as OA 1602/2002 were functioning as Director General, Railway Health Services. All of them were drawing their pay and allowances in the pre-revised scale of pay of Rs. 7300-8000/- (revised to Rs. 22,400-26,000). Department of Pension & Pensioners' Welfare letter F.No.45/10/98-P&PW (A) dated 17-12-98, conveyed President's decision "that w.e.f. 1-1-96, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay

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introduced w.e.f. 1-1-96 of the post last held by the pensioner". Similar was the direction with regard to family pension except that the quantum was fixed at 30 %. The above had been duly adopted in Railway Board's letter No. F (E)III/98/PNI/29 dated 15-1-99. Relevant portion of the said letter, as far as they relate to this OA are reproduced as below :-

"1.0 Further to implementation of Government's decision on the recommendations of Vth Central Pay Commission relating to pensionary matters, as circulated vide Board's letter No.F(E)III/97/PN1/22 dt. 5.11.1997, F (E)III/97/PN1/23 dated 7.11.1997, F(E)III/98 PN1/2 dated 10.3.98 and F(E)III/98/PN1/11 dt. 5.6.98, the President is now pleased to decide that w.e.f. 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.96 of the post as held by the pensioner/deceased Railway servant. However, the existing provisions in the Railway Services (Pension) Rules, 1993 as modified vide Board's letter No.F(E)III/97/ PN1/22 dt. 5.11.97 and 23.10.98 governing qualifying service and minimum pension shall continue to be operative. Similarly, w.e.f. 1.1.1996 family pension shall not be less than 30% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the post as held by the pensioner/ deceased Railway servant. Accordingly, the pensionary benefits of all the Railway servants who were in service on 1.1.96 and retired/died on or after 1.1.1996 and all those Railway servants retired/died prior to 1996 shall be further regulated as per the procedures indicated below.

xxxx xxxx xxxx xxxx xxxx

3.0. Revision of Pension/Family Pension of Railway servants who were in service on 1.1.1986 and retired/died during the period from 1.1.1986 to 31.12.1995.

3.1. If the basic pension of a Railway servant who retired from service during the period from 1.1.1986 to 31.12.1995 with the maximum qualifying service of 33 years, when consolidated as on 1.1.1996 in terms of para 4.1 of DOP&PW's O.M. No.45/86/97-P&PW (A) Pt.II dated 27.10.1997 circulated on the Railways vide Board's letter

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No.F(E)III/97/ PN1/23 dt. 7.11.1997, works out to be less than 50% of the minimum pay of the revised scale of pay introduced w.e.f. 1.1.1996 for the post last held by the Railway servant as on the date of retirement, his/her basic pension should be raised to 50% of the minimum pay of the revised scale of pay.; Where the retired Railway servant had less than the maximum qualifying service of 33 years, the basic pension so revised should be suitably reduced pro-rata subject to a minimum of Rs.1275/- . The pension thus revised should be treated as the basic pension w.e.f. 1.1.1996.

xxxx xxxx xxxx xxxx xxxx

4.0 Revision of pension/family pension of Railway servants who were in service prior to 1.1.1986.

4.1 In respect of Railway servants who retired prior to 1.1.1986 with a maximum qualifying service of 33 years, if the pension revised as on 1.1.1986 and consolidated as on 1.1.1996 in terms of para 2 of DOP&PW's O.M. No.45/86/97-P&PW(A)Pt.III dt.10.2.1998, circulated on the Railways vide Board's letter No.F(E)III/98/PN1/2 dt. 10.3.1998, works out to be less than 50% of the minimum pay of the revised scale of pay introduced w.e.f. 1.1.1996, applicable to the Railway servants as on the date of retirement, the amount of such pension should be raised to 50% of the minimum pay of the revised scale of pay and where the Railway servants had retired with less than the maximum qualifying service of 33 years, the pension so revised should be suitably reduced pro-rata subject to a minimum of Rs.11275/. The pension thus revised shall be admissible to the pensioner w.e.f. 1.1.1996."

In view of the above, the pension/family pension in the case of the applicants were fixed at 50% / 30% of the minimum of the replacement scale of Rs. 22,400-26,000 (corresponding to Rs. 7300-8000 before revision) w.e.f. 1-1-96.

14. While examining the case of the Railway Ministry/Railway Board, 5th Central Pay Commission had recommended in para 83.71 as below :-

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"83.71 We have considered the above facts and are of the opinion that the problem of stagnation at senior managerial levels should be urgently addressed by the government by expediting the cadre review of Group 'A' Services which is reported to be pending since 1991. Likewise the suggestion made to us that each department in Zonal Railways should be headed by a Principal Head of the Department in the pay scale of Rs.7300-7600 should be examined at the time of the cadre review exercise. We feel convinced that the pay scale of General Manager needs to be improved. We accordingly recommend that the pay scale of this post be revised to Rs.7600- 8000 in present terms. We do not recommend any change in the pay scale of other posts mentioned above."

15. Following the above, Railway Board, by its order No. 98E (G.C.) 12-14 (85) dated 30-6-99 upgraded a number of posts including those of General Managers from Rs. 22,400-26,000/- to Rs.24,050-26000/- and the post of Director General, Railway Health Services from Rs. 22,400-26,000/- to Rs. 26,000/- (fixed). Thereafter the Railway Board issued instructions vide their letter No. F(E)III/99/PNI/20 dated 9-9-1999, the relevant portion of which reads as below :-

"2. Prior to the issue of the above instructions as well as subsequently, various categories of posts on the Railways have been extended higher replacement scales w.e.f. 1.1.1996 instead of the earlier revised scales allotted to them w.e.f. 1.1.1996 in implementation of the recommendations of the Vth Central Pay Commission. As a consequence of these decisions, the pension/family pension of the retired officers/staff who held the scales of pay of the above mentioned categories of posts at the time of retirement, irrespective of the date of retirement, shall not be less than 50% and 30% respectively of the minimum paying the higher replacement scale of pay, and, therefore, the pension/family pension of such of the retired officers/staff already revised in terms of the provisions contained in Board's letter dt. 15.1.1999 referred to above, shall have to be further revised taking the minimum pay in the

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higher replacement scale of pay as on 1.1.1996". (emphasis supplied)

16. Accordingly the pension of the applicants in the OAs were re-worked on the basis of the scale of pay of Rs. 24,050-26,000/- (OA 753/2002) and of Rs.26,000/- (OA 1189/2002 & 1602/2002). This was obviously done on the interpretation adopted by the Railway Board, of the DP&PW's letter dated 17-12-98. A few other organisations also apparently adopted such an interpretation, the correctness of which was doubtful. To deal with such situations, the nodal organisation - DP & PW - issued letter No. 45/06/97 P&PW (A) (Pt) dated 11-5-2001 which reads as under :-

"The undersigned is directed to refer to this Department's O.M. No.45/10/98 P&PW(A) dated 17th December, 1998 wherein the criteria to be adopted by the Pension Sanctioning authorities while stepping up of the consolidated pension of retirees have been detailed.

In the course of implementation of the above order, clarifications have been sought by Ministries/Departments of Government of India about the actual connotation of the "post last held" by the pensioner at the time of his/her superannuation. The second sentence of O.M. dated 17.12.1998, i.e., "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.96 of the post last held by the pensioner", shall mean that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.96, of the scale of pay held by the pensioner at the time of superannuation/ retirement. (emphasis supplied)

Other provisos contained in the O.M. of 17th December, 1998 will remain unchanged.

This clarification issues with the approval of the Ministry of Finance, Department of Expenditure."

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17. Railway Board followed suit by issuance of letter No. F (E)III/99/PNI/20 dated 20-8-2001 and 1-10-2001, explaining the position. The portion of the letters read as under :-

"2. The actual connotation of the "post last held" by the pensioner at the time of retirement/death while in service has now been clarified by the DOP&PW, which is the nodal department in all pensionary matters and empowered to give final interpretation to the rules and orders relating to such matters. Accordingly, it is hereby clarified that the sentence "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.96 of the post last held by the pensioner" wherever used in Board's letters No. F(E)III/98/PN1/29 dt. 15.1.1999, shall mean that "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.96 of the scale of pay held by the pensioner at the time of retirement/death while in service. Similarly, w.e.f. 1.1.96, family pension shall not be less than 30% of the minimum of the corresponding scale as on 1.1.96 of the scale of pay held by the pensioner/deceased Railway servant." (Letter dated 20.8.2001 - Annexure R-VII)

"2. In view of the position emerging out of Board's letter dated 20.8.01, as enumerated in para 1 above, for stepping up of pension/family pension as on 1.1.1996 of the pre 1996 retired/deceased Railway servants, the scale of pay introduced w.e.f. 1.1.1996 should be the one that corresponds to the scale of pay held by the Railway servants at the time of retirement/death while in service and not the higher replacement scale of pay introduced w.e.f. 1.1.1996 or thereafter. In all cases where the pension and family pension have been stepped upto 50% and 30% respectively of the minimum pay in the higher replacement scale of pay in terms of Board's letter dated 9.9.1999, immediate action should be taken to revise the same with reference to the minimum of the corresponding scale of pay on 1.1.1996, for the scale of pay held by the Railway servant at the time of retirement/death while in service." (Letter dated 1.10.2001 - Annexure A-1)(emphasis supplied)

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18. Accordingly, Railway Board has moved to Board has moved to rectify their mistake in granting pension on the basis of higher replacement scale and recover the amount paid in excess, in the meanwhile. Speaking order No. F (E)III/2001/PNI/60 dt. 21-2-2002, passed by the Railway Board, represents the case of the respondents.

19. The applicants have assailed the above stand of the respondents on many grounds. First and foremost they plead that the downward revision of the pension (already granted to them was against the prescription under Rule 90 of the Railway Service (Pension) Rules, in terms of which, pension once finally assessed cannot be modified except on detection of a clerical error which had not occurred in this case. As correctly pointed out by the learned counsel for the respondents, this plea has no basis, as the final assessment of the pension came into being only through the impugned communications of 20-8-2001 and 1-10-2001, whereunder the actual connotation of the expression 'post last held' came to be clarified. Once the said expression was clarified, the pension had to be reworked with reference to scale of pay of the post at the time of retirement of the pensioner or the death of the employee. This was the final assessment of the pension and it was not, therefore, hit by Rule 90 ibid.

20. The next ground taken by the applicants relates to the vires of the impugned letters. Railway

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Board's letter dated 21-2-2002 makes it clear that in accordance with the Govt. of India's allocation of Business Rules, 1961, DOP&PW, under the Ministry of Personnel, Public Grievances and Pension are the nodal Department, responsible for formulation of policy and co-ordination of matters relating to retirement benefits to all Central Govt. employees, including Railway Employees. Ministry of Railways are responsible only for administration of pension rules applicable to Railway employees. Whenever any doubt arises as to the interpretation of any of the Pension Rules/orders, the Ministry of Railways (Railway Board) has to take decision after consulting the Deptt. of P&PW. This is exactly what has happened in this case. Immediately after upgrading the posts of General Managers and Director General, Railway Health Services and placing them in the higher replacement scale, the Railway Board issued instructions on 9-9-99, directing enhancement of pensions/family pensions. However, certain doubts persisted on the interpretation of the expression 'post last held', which was clarified by the DOP&PW by their letter dated 11-5-2001. Subsequent actions of the Railway Board as shown in their letters dated 20-8-2001 and 1-10-2001 emanated from the above. The directions of DOP&PW are applicable across the board to all the Ministries & Deptt. under the Govt. of India in matters relating to pensions & pensioners. That being the case. The Railway Board had properly & correctly fallen in with the same. Their action, therefore, deserves to be fully endorsed.

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21. The applicants are aggrieved at the clarification issued by the DOP&PW and Railway Board, as to the connotation of expression 'post last held'. According to them, the explanation given by the respondents that it referred to the scale of the pay of the post which existed at the time of retirement on superannuation or death in service of the employee was not correct, as 'post' and 'scale' are two different concepts and one cannot be substituted for the other. This opinion is based on fallacy in thinking that post and pay scale are totally unrelated matters. The applicants have conveniently forgotten that the scale of pay goes with the post and the 'post' does not have any existence by itself without the scale of pay. In the instant case, while the post remained the same, the scale ^{of} ~~and~~ pay had undergone a change on account of the adoption of the higher scale of pay for the post 'in the present terms'. It cannot be the case of the applicant that at the time of their retirement on superannuation, either in the General Manager level post or that of Director General, Railway Health Services, they were drawing the scale of pay higher than Rs.7300-8000/-. This scale of pay underwent a change and became Rs. 7600-8000/- (in the case of GMs) & Rs. 8,000/- (in the case of DGRHS) only much after their retirement. Therefore, the pension they could have been given is only relateable to the scale of Rs. 7300-8000/- and not Rs. 7600-8000/- or Rs.8000/- fixed. Thus while the post remained the same, the scale of pay underwent a slight difference. That being the case, the Govt. (DOP&PW & Rly. Board)

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adopted the stand that the expression 'post last held' could only be taken as a scale of pay of the post last held at the time of retirement or death and not otherwise. This was the only interpretation which could have been adopted. Naturally, therefore, the interpretation adopted earlier by the Railway Board's letter dated 9-9-99, which was incorrect in law, had to be rectified and action was initiated to re-work the pension/family pension at 50% / 30% of the minimum of the scale of pay attached to the post at the time when the officers retired on superannuation or died while in service. The adoption of above procedure by the respondents gains full support in law.

22. The applicants' plea that the only replacement scale for GM level officers w.e.f. 1-1-96 stood at Rs. 24,050-26000 is also misleading. The fact is that this is the replacement scale of Rs. 7600-8000/- or Rs. 8000/- fixed, a scale of pay which they did not at all enjoy, while in service. The scale of pay, as far as the applicants were concerned, was only Rs. 7,300-7600/- and, therefore, the relevant replacement scale was only Rs. 22,400-26,000/-. Not having worked in the pay scale of Rs. 7600-8000/- or Rs. 8000/- fixed, the applicants cannot at all ask that their pensions to be fixed with relation to pay scale of Rs. 24,050-26,000/-.

23. According to the applicants, the action of the respondents have discriminated them vis-a-vis the retirees of 1-1-96 and thereafter. This plea has no

basis whatsoever. The decision of the Govt. has been to ensure complete parity as far as pre-1996 retirees are concerned, irrespective of the fact that they had retired before 1-1-1986 or thereafter upto 31-12-95. Pension in respect of all those retirees have been refixed and consolidated to ensure that their pension/family pension did not fall below 50% / 30% of the minimum of the pay scale which they were drawing at the time of their retirement or death while in service. However, their only entitlement is only for modified parity vis-a-vis post-1996 retirees, who were drawing pay & allowances in the revised scale keeping in mind the instructions ~~of~~ computation of pension. The applicants cannot seek parity with post-1996 retirees and state that they have been discriminated. There is no discrimination whatsoever and no violation of Articles 14 & 16 of the Constitution is involved.

24. The learned counsel for the applicants had laid considerable stress on the expression "in the present terms" appearing in para 83.71 of the recommendations of the 5th Central Pay Commission, and argued that it meant the extension of revised higher pay for computation of pension for pensioners in GM level also. We are ~~at~~ a loss to understand how such an interpretation is possible. The expression "in the present terms" can only refer to those ~~existing~~ ^{existing} at that time and not to past events and past individuals. The revision of scale of pay from Rs.7,300-8000/- to Rs.7,600-8000/- or Rs.8000/- (fixed) was only available to those in service. By no stretch of

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argument can it be explained to cover cases of those who were in service while the pre-revised scale of Rs.7,300-8000/- was in force.

25. The applicants have also assailed the sanction behind the clarification issued by the DOP&PW on 13-5-2001, which has been adopted by the Railway Board in their letters dated 20-8-2001 and 1-10-2001. They allege that the earlier decision of the DOP&PW and Railway Board which were Presidential Notifications, were being sought to be replaced and supplemented by an administrative order. The Tribunal had, while examining the OA 480/2001 filed by S.C. Parashar, called for the relevant file from the DOP&PW which had recorded as below:- perused the relevant file, in which the issue had been examined in detail and has recorded as below :-

"7. We have carefully perused the departmental F.No.45/86/97-P&PW (A)/Pt.II dealing with the subject of 'implementation of the decision of Vth Pay Commission on pensionary benefits to Central Govt. Employees', and find that the clarificatory OM in question has been issued after a good deal of consideration at various levels in the department of P&PW & Expenditure and only after receiving the approval of the Finance Minister as well as the Prime Minister. A conscious decision was taken on the file to issue the aforesaid clarificatory OM without bothering the Union Cabinet in the matter as the said OM was proposed to be issued only in order to clarify the position so as to remove the ambiguity.

26. The Transaction of Business Rules, 1961 provide for departure from Rule in the following term:-

"12. Departure from Rules. The Prime Minister may, in any case, or elapse of cases permit or condone a departure from these Rules to the extent he deems necessary."

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Prime Minister's approval had been obtained after making it clear on file that it was not considered necessary to bother the Union Cabinet. The Prime Minister having exercised the authority vested in him in accordance with the aforesaid Rule, it cannot be argued that the clarificatory OM in question had been issued without obtaining appropriate authority."

27. The above view has been endorsed and adopted by the Division Bench comprising both of us while disposing of OA No. 2012/2001 filed by A.S.Rao. We had also perused the relevant file. We are fully convinced that the decision for issuing the clarification has been taken at the highest level of the Executive of the country keeping in mind all the circumstances on the subject. The plea canvassed by Dr. J.K. Choudhary, applicant in OA 1183/2002 that the Prime Minister's decision does not amount to much deserves mention only to be rejected. The clarification dated 10.5.2001 issued by DOP&PW in their capacity as the nodal Ministry has been adopted and given effect by the Railway Board, in letters dated 20.8.01 and 1.10.01, as already brought in their speaking order dated 21.2.2002. The applicants' plea on this ground also have to fail.

28. Next point made by the applicants is that even if the clarification issued by the DOP&PW was legal, it could only have prospective effect and could not have been implemented retrospectively, just to deny the applicants, pension/family pension already granted

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to them correctly. This again has no basis in law. D.O.P & PW's letter of 10.5.01 was indeed a clarification and not a modification or amendment. Therefore, it has to be read along with the letter dated 17.12.1998, it seeks to clarify and correctly dates from 17.12.1998 and not from 10.5.2001. The respondents have, therefore, correctly given effect to the clarification as it is a part of earlier letter itself. The said action was also fully protected in law.

29. We have already noted above ^{law,} the issue of computation of pension has already been dealt with the two Courts in the Principal Bench while disposing of two OAs No.480/01 filed by S.C. Parasher decided on 20.9.02 and No.2012/01 filed by A.S. Rao, decided on 28.1.03. In fact OA No.2012/2001 was decided by the Division Bench in which both of us were Members. It has been held in both these cases that the clarification issued by DOP&PW was legal and binding on all Ministries and Departments of Govt. of India and that it had full sanction of the highest authority of the country. The circumstances being identical, the said findings would squarely cover these OA as well. Shri Maine, learned counsel for the applicants had made a feeble attempt to distinguish the facts of these OAs from the fact of the two OAs under reference. He has even argued that the said decisions would support his pleas. We do not know how. If anything, they go against the pleas made on behalf of his clients. In the above circumstances, we reiterate

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that the applicants were correctly entitled for grant of pension/family pension, worked out at 50%/30% of the minimum pay of the pay scale attached to the post, which they ^{were drawing} at the time of their retirement on superannuation/death during service and not otherwise. Therefore, they could have been granted pensions/family pensions only at a level not less than 50%/30% of the pay scale of Rs.7300-8000/- which they were holding at the time of the retirement/death (revised to Rs.22,400-26,000/-) and not ^{Rs. 7300-8000/- or Rs. 26,000/- fixed} (Rs. 24050 to Rs.26,000/- or Rs.26,000/- (fixed)). The correction/rectification ordered by the respondents deserves full endorsement by the Tribunal. However, as the applicants are senior citizens who have retired quite some time ago and are in the evening of their lives, the excess amount received by them, even by mistake, would have to be permitted to be retained by them and should not ~~be~~ be recovered.

30. The applicants ^{have} also pointed out that the decisions of Principal Bench of the Tribunal, denying the inclusion of NPA while computing pension have been set aside by the Hon'ble Delhi High Court. The same, however, does not at all come to the assistance of the applicants as the decision of Hon'ble Delhi High Court has not attained finality as ^{it has} ~~they have~~ been challenged before the Hon'ble Supreme Court as pointed out by the learned counsel for the respondents. Even otherwise the issue decided in those cases is totally different from the points for determination in the present OAs.

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31. In the above view of the matter, we find that none of the three OAs, OAs 753/2002, 1183/2002 and 1602/2002 has any merits. They fail and are accordingly dismissed. The respondents' action in refixing pension/family pension of the applicants on the basis of the pay of Rs.22,400 to Rs.26000/- (corresponding to the pre-revised scale of Rs.7300-8000/-) is upheld as valid. However, as a matter of extreme ^{indulgence to the applicants} ~~interference~~, we direct that the amounts, if any paid in excess, by the adoption of the inadmissible higher scale be not be recovered.

No costs.

(SHANKER RAJU)
Member (J)

/pkr/

(GOVINDAN S. TAMPI
Member (A))

Shankar
Govindan
S. Tampi