Central Administrative Tribunal, Principal Bench, New Delhi

O.A.777/2002,M.A.646/2002,M.A.508/2002 with
O.A.980/2000, R.A.86/2002,M.A.705/2002
O.A.1044/2001,M.A.120/2004; O.A.3342/2001;
O.A.3253/2002;O.A.1884/2003;
O.A.1893/2003;O.A.1894/2003;O.A.1896/2003;
O.A.2662/2003;O.A.114/2004;O.A.115/2004;
O.A.116/2004;O.A.117/2004;O.A.118/2004;
O.A.749/2004;O.A.708/2005;O.A.997/2005

New Delhi, this the 19th day of JULY, 2005

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.V.K. Majotra, Vice Chairman (A)
Hon'ble Mr.Justice M.A. Khan, Vice Chairman (J)

O.A.777/2002

1. Shri K. Venkata Rao,
2. Shri A.R. Sastry Retd. Guard
3. National Federation of the
Railway Pensioners' Association
Represented by its General Secretary,
And President, Railway Pensioners'
Association rep. by Shri K.S. Murthy ....Applicants

((By Advocate: Shri Y. Rajagopal Rao with Shri Y. Ramesh)

versus

1. Union of India represented
by its Secretary to Government,
Ministry of Railways,
Rail Bhawan, New Delhi.

2. Railway Board represented by
It's Chairman, Rail Bhawan,
New Delhi

3. Deputy Director Finance (Estt.) III
Railway Board, Rail Bhawan,
New Delhi ....Respondents

(By Advocate: Shri B.S. Jain)

O.A.980/2000

S.P. Puri and 12 others
as per memo of party ....Applicants

29

(By Advocate: Shri B.S. Mainee)

versus

1. The Chairman Railway Board,
   Rail Bhawan, New Delhi

2. The Deputy Director Finance,
   (Estt.) III, Railway Board,
   Rail Bhawan, New Delhi

3. The Divisional Accounts Officer,
   Northern Railway, New Delhi

4. The General Manager,
   Northern Railway,
   Baroda House, New Delhi ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.1044/2001

Tejpal and 33 others
as per memo of party ....Applicants

(By Advocate: Shri B.S. Mainee)

versus

1. Union of India through its
   Secretary, Ministry of Railways,
   Rail Bhawan, New Delhi

2. The Chairman, Railway Board,
   Rail Bhawan, New Delhi

3. The Dy. Director Finance,
   (Estt.) III, Railway Board,
   Rail Bhawan, New Delhi.

4. The Senior Divisional Accounts Officer,
   Northern Railway, D.R.M's Office,
   New Delhi.

5. The Senior Divisional Accounts Officer,
   Northern Railway, D.R.M's Office,
   Ambala Cantt.

6. The General Manager,
   Northern Railway, Baroda House,

New Delhi. ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.3342/2001

V.M. Ponnusamy and 125 others
as per memo of party ....Applicants

(By Advocate: Shri B.S. Mainee)

versus

Union of India through its
Secretary, Ministry of Railway,
Rail Bhawan, New Delhi and 20 others ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.3253/2002

Gurdial Singh,
S/o Shri Sewa Singh,
R/o House No.550, Sector-8,
Faridabad (Haryana) ....Applicant

(By Advocate: None)

versus

1. Union of India,
Through its Chairman,
Railway Board, Rail Bhawan,
New Delhi.

2. General Manager,
Northern Railway,
Baroda House, New Delhi

3. Divisional Railway Manager,
Northern Railway,
Nawab Yusuf Road,
Allahabad ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.1884/2003

Vishwanath Mishra and two others
as per memo of party ....Applicants

(By Advocate: Shri B.S. Mainee)

versus

1. The Union of India,
Through the Chairman, Railway Board,
Ministry of Railways (Bharat Sarkar)
Rail Bhawan, New Delhi

2. Shri S. Sri Ram,
Dy. Director Finance (Est).III,
Railway Board,Rail Bhawan,
New Delhi

3. The General Manage, N.E. Railway,
Gorakhpur

4. The F.A. & C.A.O.,
N.E. Railway, Gorakhpur

5. The Divisional Rail Manager,
N.E. Railway, Sonpur, Saran

6. The Divisional Accounts Officer,
N.E. Railway, Sonpur,
District – Saran ....Respondents

(By Advocate: Shri R.L. Dhawan with Shri Rajinder Khatter)

O.A.1893/2003

J.P. Kudesia and 26 others
as per memo of party ....Applicants

(By Advocate: None)

versus

1. The Union of India through
The Chairman
Railway Board, Rail Bhawan,
New Delhi

2. The Deputy Director Financial (East) III,
Railway Board, Rail Bhawan,
New Delhi

3. The Senior Divisional Accounts Officer,
Northern Railway,

Nawab Yusuf Road,
Divisional Railway Manager Office,
Allahabad

4. The Senior Divisional Accounts Officer,
Central Railway,
Divisional Railway Manager Office,
Jhansi

5. The Senior Divisional Accounts Officer,
N.E. Railway,
Divisional Railway Manager Office,
Gorakhpur ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.1894/2003

M.P. Srivastava and two others
as per memo of party ....Applicants

(By Advocate: Shri R.K. Shukla,proxy for Shri A.B.Lal Srivastava)

versus

1. Union of India, through
The Chairman Railway Board,
Rail Bhawan, New Delhi.

2. The Secretary to Govt. of India,
Department of Pension and Pensioners Welfare,
Sardar Patel Bhawan, New Delhi.

3. The General Manager,
Northern Railway,
Baroda House, New Delhi

4. The Divisional Railway Manager,
Northern Railway, Allahabad Division,
Nawab Yusuf Road, Allahabad

5. The Senior Divisional Accounts Officer,
N. Railway, Allahabad Division,
Nawab Yusuf Road, Allahabad ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.1896/2003

Mr.Ashoke Kumar Sanyal and 162 others
As per memo of party ....Applicants

(By Advocate: Shri Ranjan Mukherjee)

versus

1. Union of India through
Ministry of Railways,
Rail Bhawan, New Delhi.

2. Chairman
Railway Board,
Rail Bhawan, New Delhi

3. General Manager,
South Eastern Railway,
Garden Reach, Calcutta ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.2662/2003

H.N. Chowdhury and 30 others
as per memo of party ....Applicants

(By Advocate: Shri B.S. Mainee)

versus

Union of India, through

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
Raisina Road,New Delhi-1

2. The General Manager,
South Eastern Railway,
Garden Reach, Calcutta

3. The Divisional Railway Manager,
S.E. Railway,
Adra ....Respondents

(By Advocate: None)

O.A.114/2004

Shri Ram Kumar Shukla,
Aged about 76 years,
Son of Shri Rattan Sharma
Resident of 555-KHA 153,

New Shindhu Nagar,
Manas Nagar,Lucknow

....Applicant

(By Advocate: None)

versus

1. Union of India, through
The General Manager,
Northern Railway, Baroda House,
New Delhi

2. The Senior Divisional Accounts Officer,
Northern Railway,
Moradabad

3. The Chairman, Railway Board,
Rail Bhawan, New Delhi

4. The Senior Post Master,
Chowk Head Office,
Lucknow

....Respondents

(By Advocate: None)

O.A.115/2004

Sardari Lal Mehta
Son of late Shri Ram Piara,
Age 76 years,
Ex. Special A-Guard,
Now R/o H.No.42-A, MIG Housing Board,
Kalka

....Applicant

(By Advocate: Shri D.R. Sharma)

versus

1. Union of India through
The General Manager,
Northern Railway, Baorda House,
New Delhi

2. Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

3. Secretary,
Ministry of Personnel, Public Grievances
And Pensions,

Deptt. of Pension and Pensioners Welfare,
New Delhi.

4. Senior Divisional Accounts Officer,
Northern Railway,
Ambala Cantt.

5. Manager,
Punjab National Bank,
Kalka ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.116/2004

Shri Satya Pal Wadehra and 5 others
As per memo of party ....Applicants

(By Advocate: Shri B.S. Mainee with Shri D.R. Sharma)

versus

1. Union of India through
The Chairman,
Railway Board, Ministry of Railway,
Rail Bhawan, New Delhi

2. General Manager,
Northern Railway, Baroda House,
New Delhi.

3. Divisional Railway Manager,
Northern Railway,
Ferozepur Cantt. ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.117/2004

Partap Rai and 3 others
as per memo of party ....Applicants

(By Advocate: Shri D.R. Sharma)

versus

1. Union of India through
The Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.

2. Divisional Railway Manager,
Ambala Division,
Ambala

3. Secretary,
Ministry of Personnel,
Deptt. of Pension & Pensioners Welfare,
New Delhi

4. General Manager,
Northern Railway,
Baroda House, New Delhi.

5. Senior Divisional Accounts Officer,
Northern Railway, Ambala Division,
Ambala

....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.118/2004

Kundan Lal and 6 others
As per memo of party

....Applicants

(By Advocate: Shri B.S. Mainee with Shri D.R. Sharma)

versus

1. Union of India through
The Chairman,Railway Board,
Ministry of Railway, Rail Bhawan,
New Delhi

2. General Manager,
Northern Railway, Baroda House,
New Delhi.

3. Divisional Railway Manager,
Northern Railway,
Ambala Division, Ambala

....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.749/2004

Shanti Devi widow of Late Shri Joti Swaroop, Driver (A),
Aged about 70 years,

Pratap Nagar, Street No.2, Near Railway Diggi,
Bathinda

....Applicant

(By Advocate: Shri D.R. Sharma)

versus

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi

2. Divisional Railway Manager,
Ambala Division,
Ambala

3. Senior Divisional Accounts Officer,
Northern Railway, Ambala Cantt.

4. Manager,
Punjab National Bank, Bank Street,
Bathinda

....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.708/2005

John Kunchandy, aged 77 years,
S/o J.K. Kunchandy,
Retired 'A' Grade Guard,
Southern Railway, Madras Division,
Residing at : Kottayadi Thekkathil,
Thrippilazhikam P.O.,
Kollam-691 509

....Applicant

(By Advocate: None)

versus

1. Union of India represented
The Secretary to the
Government of India,
Ministry of Railways,
Rail Bhawan, New Delhi.

2. The General Manager,
Southern Railway,

Park Town P.O.,
Chennai - 600 003.

3. The Divisional Railway Manager,
(Personnel), Southern Railway,
Madras Division, Madras-3

4. The Divisional Accounts Officer,
Southern Railway,
Madras Division, Madras-3 ....Respondents

(By Advocate: Shri R.L. Dhawan)

O.A.997/2005

Senior Citizens Organization of
Railway Employees (SCORE) and 4 others
As per memo of party ....Applicants

(By Advocate: None)

versus

1. Union of India, through
The Secretary,
Railway Board, Rail Bhawan,
New Delhi

2. The General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai-400 020

3. The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai-400 001 ....Respondents

(By Advocate: Shri R.L. Dhawan)

Order

Justice V.S. Aggarwal, Chairman

Following question has been referred for consideration of a Larger Bench by the Ernakulam Bench of this Tribunal:

"In the light of the Govt. of India, Department of Personnel and Pensioners Welfare, O.M. dated 10.2.98 as adopted by the Railway Board by their letter dated 10.3.98, for revision of pension of pre-1986 running staff pensioners with effect from 1.1.1996, whether the direction of the Principal Bench of this Tribunal contained in the order dated 22.1.2002 in O.A. No.2425/2000 and M.A. No.2879/2000 of adding 75% notional pay as on 1.1.86 to the notional pay arrived at as on 1.1.86 is correct law."

2.The same question was pending before some of the Benches of this Tribunal. Therefore, the petitions were taken in the Principal Bench for consideration and decision of the abovesaid controversy.

3.At the outset, in all fairness to the respondents' counsel, it must be mentioned that during the course of submissions, it was pointed that keeping in view the number of petitions that were pending in different High Courts, they have already moved the Supreme Court for adjudication of the same controversy. However, no order as yet has been passed. In the meantime, the Delhi High Court had directed that Larger Bench should be constituted at the earliest. It is in this backdrop that the aforesaid petitions have been heard.

4.All the applicants had retired as Guards/Drivers etc. These posts come under the category of running staff. They are entitled to running allowance which is based on kilometers covered every month.

5.The running allowance admissible to the said staff is also included in the average emoluments at the time of retirement to work out the pension admissible to such staff. This is in accordance with Rule 2544 of Indian Railway Establishment Code (Vol.2) for calculation of the average emoluments. The said rule reads:

"2544.(C.S.R.486) Emoluments and Average Emoluments – The term 'Emoluments', used in these Rules, means the emoluments which the officer was receiving immediately before his retirement and includes –

(a) pay other than that drawn in tenure post;

(b) personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of a permanent post other than a tenure post, or (ii) with the specific sanction of the Government of India, for any other personal considerations.

Note – Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as personal allowance for the purpose of this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President.

© fees or commission if they are the authorized emoluments of an appointment, and are in addition to pay. In this case `Emoluments' means the average earnings for the last six months of service;

(d) acting allowances of an officer without a substantive appointment if the acting service counts under Rule 2409 (C.S.R. 371), and allowances drawn by an officer appointed provisionally substantively or appointed substantively pro tempore or in an officiating capacity to an office which is substantively vacant and on which no officer has a lien or to an office temporarily vacant in consequence of the absence of the permanent incumbent on leave without allowances or on transfer to foreign service;

(e) deputation (duty) allowances;

(f) duty allowances (special pay); and

(g)(i) For the purpose of calculation of average emoluments – Actual amount of running allowances drawn by the railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above.

(ii) For the purpose of gratuity and/or `death-cum-retirement gratuity – The monthly average of running allowances drawn during the three hundred and sixty-five days of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of the other emoluments reckoned in terms of items (a) to (f) above drawn during the same period.

Note – In case of an officer with a substantive appointment who officiates in another appointment or hold a temporary appointment, `Emoluments' means –

(a) the emoluments which would be taken into account under this Rule in respect of the appointment in which he officiates or of the temporary appointment, as the case may be, or

(b) the emoluments which would have been taken into account under this Rule had he remained in his substantive appointment, whichever are more favourable to him."

In this process, the emoluments are drawn taking into account 75% of the other emoluments in accordance with the abovesaid Rule.

6.All the applicants had superannuated prior to 1.1.1986. When pay scales of the railway employees were revised from 1.1.1973 under the Railway Services (Revised Pay) Rules, 1973, the Railway Board had intimated that existing percentage of running allowance would continue for the time being though it was under revision. In a subsequent letter, percentage was reduced to 45% retrospectively from 1.4.1976. The same had been quashed by this Tribunal. At this stage, it is relevant to mention that the abovesaid reduction was on account of some local instructions. The Railway Board had issued an amendment to Rule 2544 on 5.12.1988. It gave the amendment retrospective effect which was subject matter of challenge earlier in this Tribunal. The Full Bench of this Tribunal had quashed the aforesaid amendment in so far as its retrospective effect was concerned. The Supreme Court considered the said controversy in appeal against that order of this Tribunal reported as Chairman, Railway Board and others v. C.R. Rangadhamaiah and others, (1997) 6 SCC 623. It upheld the order of this Tribunal to the extent the said amendment was given retrospective effect to reduce the maximum limit from 75% to 45% in respect of the period from 1.1.1973 to 31.3.1979 and reduce it to 55% in respect of the period from 1.4.1979, as arbitrary. The findings of the Supreme Court in this regard are:

"34. The learned Additional Solicitor General has, however, submitted that the impugned amendments cannot be regarded as

arbitrary for the reason that by the reduction of the maximum limit in respect of running allowance from 75% to 45% for the period 1.1.1973 to 31.3.1974 and to 55% from 1.4.1979 onwards, the total amount of pension payable to the employees has not been reduced. The submission of the learned Additional Solicitor General is that since the pay scales had been revised under the 1973 Rules with effect from 1.1.1973 the maximum limit of 45% or 55% of the running allowance will have to be calculated on the basis of the revised pay scales while earlier the maximum limit of 75% of running allowance was being calculated on the basis of unrevised pay scales and, therefore, it cannot be said that there has been any reduction in the amount of pension payable to the respondents as a result of the impugned amendments in Rule 2544 and it cannot be said that their rights have been prejudicially affected in any manner. We are unable to agree. As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of the Government. The respondents who retired after 1.1.1973 but before 5.12.1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of running allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 Rules. Merely because the respondents were not paid their pension on that basis in view of the orders of the Railway Board dated 21.1.1974, 22.3.1976 and 23.6.1976, would not mean that the pension payable to them was not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated 5.12.1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated 5.12.1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from 1.1.1973 to 31.3.1979 and reduce it to 55% in respect of the period from 1.4.1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution." (Emphasis added)

7.In pursuance of the aforesaid judgment, the Railway Board had issued a notification of 14.10.1997. It was decided to implement the judgement and directions were issued that retiral benefits of the running staff who retired between 1.1.1973 and 4.12.1988 should be recomputed in accordance with Rule 2544 of the Indian Railway Establishment Code as computed before the amendment of 5.12.1988. It was decided that arrears on account of re-computation should also be paid to the retired employees. The operative part of the said direction is:

> "2. Accordingly Ministry of Railways (Railway Board) have decided that:-
>
> (i)The pension and other retiral benefits of the running staff who retired between 1.1.73 to 4.12.88 and were involved in above cited Civil Appeals/SLPs as well as other similarly situated employees may be recomputed in accordance with Rule 2544 R-II as was in force before it was amended by notification dated 5.12.88.
>
> (ii) The arrears on account of recomputation of pension and other retiral benefits as abovesaid may be calculated and paid to these employees/their legal heirs."

8.In accordance with the aforesaid decision of the Railway Board, the retiral benefits of the applicants who had retired prior to 1986 were worked out and the same was recomputed at 75% of the emoluments in lieu of the running allowance and arrears were paid.

9.Meanwhile, the recommendations of the Fifth Central Pay Commission had also been published. The Central Pay Commission in Chapter-137 has considered the pension structure and in Para-137 explained the concept of pay parity as under:

> "137.7. The concept of parity, which is also known by the term Equalisation of Pension, means that past pensioners should get the same amount of pension which their counterparts retiring on or after 1.1.1996 from the same post, will get irrespective of the date of retirement or the emoluments drawn at the time of retirement of the past pensioners. The

42

concept of parity in pension pre-supposes the existence of a universally acceptable system by which comparison can be drawn between past and current retirees. The only possible manner in which this can be made possible is by introducing the system of Rank Pension or one pension for one grade. At present the system of Rank Pension is in vogue only for personnel below officer rank in the Armed Forces. Under this system if the person has held the rank, from which he retires for ten months or more, his pension is calculated with reference to emoluments at the maximum of the scale of pay attached to the rank irrespective of the actual pay drawn by him. If he has not held the said rank for the minimum period of ten months, his pension is computed with reference to maximum pay of the next lower rank which he held for ten months."

10. The Commission had analysed the disparity in pension and noted the extent of disparity. Recommendations were made in Para-137.13 and Para 137.14 as under:

"137.13 While it is desirable to grant complete parity in pension to all past pensioners irrespective of the date of their retirement, this may not be feasible straightaway as the financial implications would be considerable. The process of bridging the gap in pension of past pensioners has already been set in motion by the Fourth CPC when past pensioners were granted additional relief in addition to consolidation of their pension. This process of attainment of reasonable parity needs to be continued so as to achieve complete parity over a period of time.

137.14 As a follow up of our basic objective of parity, we would recommend that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees. This step would bring all the past pensioners to a common platform or on to the Fourth CPC pay scales as on 1.1.1986. Thereafter all the pensioners who have been brought on to the Fourth CPC pay scales by notional fixation of their pay and those who have retired on or after 1.1.1986 can be treated alike in regard to consolidation of their pension as on 1.1.1996 by allowing the same fitment weightage as may be allowed to the serving employees. However, the consolidated pension shall be not less than 50% of the minimum pay of the post, as revised by Fifth CPC, held by the pensioner at the time of retirement. This consolidated amount of pension should be the basis for grant of dearness relief in future. The additions to pension as a result of our recommendations in this Chapter shall not, however, qualify for any additional commutation for existing pensioners."

11. The Commission had also considered the demand of one rank and one pension. It was rejected. Another demand before the Commission was revision of pension with reference to the maximum pay of the post held by the pensioner

at the time of superannuation. The Commission made the following recommendations:

> "137.20 We have given our careful consideration to the suggestions. While we do not find any merit in the suggestion to revise the pension of past retirees with reference to maximum pay of the post held at the time of retirement, as revised by the Fifth CPC, there is force in the argument that the revised pension should be not less than that admissible on the minimum pay of the post held by the retiree at the time of retirement, as revised by the Fifth CPC. We have no hesitation in conceding the argument advanced by pensioners that they should receive a pension at least based on the minimum pay of the post as revised by Fifth Pay Commission in the same way as an employee normally gets the minimum revised pay of the post he holds. We recommend acceptance of this principle which is based on reasonable considerations.
>
> 137.21 The Commission has decided to enunciate a principle for the future revision of pension to the effect that complete parity should normally be conceded upto the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. This guiding principle which we have accepted would assure that past pensioners will obtain complete parity between the pre-1986 and post-1986 pensioners but there will be only a modified parity between the pre-1996 and post 1996 pensioners. The enunciation of the principle would imply that at the time of the next pay revision, say, in the year 2006, complete parity should be given to past pensioners as between pre-1996 and post-1996 and modified parity be given between the pre-2006 and post-2006 pensioners."

12.It is not in dispute that the recommendations of the Pay Commission had by and large been accepted.

13.After the recommendations of the Pay Commission, on 27.10.1997 the Ministry of Personnel, Public Grievances and Pensions issued an Office Memorandum in which in Paragraphs 3.1 (a) and 3.1 (b), it has been mentioned:

> "3.1 In these orders:
>
> (a)'Existing pensioner' or 'Existing Family Pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31-12-1995.
>
> (b)'Existing pension' means the basic pension inclusive of commuted portion, if any, due on 31-12-95, it covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the

corresponding rules applicable to Railway employees and Members of All Indian Services."

14.From 1.1.1996, the pension/family pension was to be fixed with the following formula:

"4.1 The pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated with effect from 1.1.96 adding together:-

i) The existing pension/family pension.

ii) Dearness Relief upto CPI 1510 i.e. @ 148%, 111% and 96% of Basic Pension as admissible vide this Department's OM No.42/8/96-P&PW(G), dated 20-3-96.

iii) Interim Relief.I

iv) Interim Relief.II

v) Fitment weightage @ 40% of the existing pension/family pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.96. The upper ceiling on pension/family pension laid down in the Department of Pension and Pensioners' Welfare Office Memorandum No.2/1/87-PIC-II, dated 14-4-87 has been increased from Rs.4500/- and Rs.1250 to 50% and 30% respectively of the highest pay in the Government (The highest pay in the Government is Rs.30,000/- since 1.1.1996). Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements."

15.Another Office Memorandum had been issued on 10.2.1998 by the Ministry of Personnel, Public Grievances and Pensions pertaining to implementation of Government's decision on the recommendations of the Fifth Central Pay Commission. The relevant portion of the same reads:

"Subject: Implementation of Government's decision on the recommendations of the Fifth Central Pay Commission – Revision of pension of pre-1986 pensioners/family pensioners etc.

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Fifth Central Pay Commission announced in this Department's Resolution No.45/86/97-P&PW(A) dated 30.9.1997 and in continuation of instructions contained in this Department's Office Memorandum No.45/86/97-P&PW(A)-Part II dated 7.10.1997, the President is

now pleased to decide that the pension/family pension of all pre-1986 pensioners/family pensioners who were in receipt of the following types of pension as on 1.1.1996 under Liberalised Pension Rules, 1950, CCS (Pension) Rules 1972 as amended from time to time or the corresponding rules applicable to Railway pensioners and pensioners of All India Services may be revised w.e.f. 1.1.1996 in the manner indicated in the succeeding paragraphs:-

i) Retiring Pension.
ii) Superannuation Pension
iii) Compensation Pension
iv) Invalid Pension

2. In accordance with the provisions contained in CCS (Pension) Rules, 1972 and the Government's orders issued thereunder, at present pension of all pre-1986 pensioners is based on the average emoluments drawn by them during last completed 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. Government has, inter-alia accepted the recommendation of Fifth Central Pay Commission to the effect that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees and thereafter for the purpose of consolidation of their pension/family pension as on 1.1.1986, they may be treated alike those who have retired on or after 1.1.1986. Accordingly, pay of all those governments servants who retired prior to 1.1.1986 and were in receipt of pension as on 1.1.1986 and also in cases of those Central Government employees who died prior to 1.1.1986, in respect of whom family pension was being paid on 1.1.1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner at the time of retirement or on the date of death of Government employee, introduced subsequent to retirement/death of Government employees consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or of award of Board of Arbitration or judgment of Court or due to general revision of the scale of pay for the post etc. The number of occasions on which pay shall be required to be fixed on notional basis in each individual case would vary and may be required to be revised on several occasions in respect of those employees who retired in the `fifties and sixties'. In all such cases pay fixed on notional basis on the first occasion shall be treated as `pay' for the purpose of emoluments for re-fixation of pay in the revised scale of pay on the second occasion and other elements like DA/Adhoc DA/Additional DA, IR etc. based on this notional pay shall be taken into account. In the same manner pay on notional basis shall be fixed on subsequent occasions. The last occasion shall be fixation of pay in the scale introduced on the basis of Fourth Central Pay Commission and made effective from 1.1.1986. While fixation of

pay on notional basis on each occasion, the pay fixation formulas approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. However, the benefit of any notional increments admissible in terms of the rules and instructions applicable at the relevant time shall not be extended in any case of refixation of pay on notional basis. The notional pay so arrived as on 1.1.1986 shall be treated as average emoluments for the purpose of calculation of pension and accordingly, the pension shall be calculated as on 1.1.1986 as per the pension formula then prescribed. The pension so worked out shall be consolidated as on 1.1.1996 in accordance with the provisions contained in paragraph 4.1 of this Department's Office Memorandum No.45/86/97-P&PW(A) Part-II dated the 27th October, 1997 and shall be treated as basic pension for the purpose of grant of Dearness Relief in future.

3. In the case of family pension, the notional pay as on 1.1.1986 shall be treated as pay last drawn by the deceased Government employee/pensioner and family pension shall be calculated thereon at the rate in force as on 1.1.1986. This family pension shall be consolidated as on 1.1.1996 in accordance with the provisions contained in para 4.1 of this Department's Office Memorandum No. 45/86/97-P&PW(A) Part-II dated the 27th October, 1997."

16.It was followed by the subsequent instructions of 10.2.1998 and instructions were specifically issued for revision of pension of pre-1986 pensioners/family pensioners. The same are also being reproduced:

"The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Fifth Central Pay Commission announced in this Department's Resolution No.45/86/97-P&PW(A) dated 30.9.1997 and in continuation of instructions contained in this Department's Memorandum No. 45/86/97-P&PW(A)-Part II dated 27.10.1997, the President is now pleased to decide that the pension/family pension of all pre-1986 pensioners/family pensioners who were in receipt of the following types of pension as on 1.1.1996 under Liberalised Pension Rules, 1950, CCS (Pension) Rules, 1972 as amended from time to time or the corresponding rules applicable to Railway pensioners and pensioners of All India Services may be revised w.e.f. 1.1.1996 in the manner indicated in the succeeding paragraphs:-

(i) Retiring Pension
(ii) Superannuation Pension
(iii) Compensation Pension
(iv) Invalid Pension

2. In accordance with the provisions contained in CCS (Pension) Rules, 1972 and the Government's orders issued thereunder, at present pension of all pre-1986 pensioners is based on the average emoluments drawn by them during last completed 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. Government has inter-alia accepted the recommendation of Fifth Central Pay Commission to the effect that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees and thereafter for the purpose of consolidation of their pension/family pension as on 1.1.1986, they may be treated alike those who have retired on or after 1.1.1986. Accordingly, pay of all those government servants who retired prior to 1.1.1986 and were in receipt of pension as on 1.1.1986 and also in cases of those Central Government employees who died prior to 1.1.1986, in respect of whom family pension was being paid on 1.1.1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner at the time of retirement or on the date of death of Government employee, introduced subsequent to retirement/death of Government employee consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or of award of Board of Arbitration of judgment of Court or due to general revision of the scale of pay for the post etc. The number of occasions on which pay shall be required to be fixed on notional basis in each individual case would vary and may be required to be revised on several occasions in respect of those employees who retired in the `fifties and sixties'. In all such cases pay fixed on notional basis on the first occasion shall be treated as `pay' for the purpose of emoluments for re-fixation of pay in the revised scale of pay on the second occasion and other elements like DA/Adhoc DA/Additional DA, IR etc. based on this notional pay shall be taken into account. In the same manner pay on notional basis shall be fixed on subsequent occasions. The last occasion shall be fixation of pay in the scale introduced on the basis of Fourth Central Pay Commission and made effective from 1.1.1986. While fixation of pay on notional basis on each occasion, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. However, the benefit of any notional increments admissible in terms of the rules and instructions applicable at the relevant time shall not be extended in any case of refixation of pay on notional basis. The notional pay so arrived as on 1.1.1986 shall be treated as average emoluments for the purpose of calculation of pension and accordingly the pension shall be calculated as on 1.1.1986 as per the pension formula then prescribed. The pension so worked out shall be consolidated as on 1.1.1996 in accordance with the provisions contained in paragraph 4.1 of this Department's Office Memorandum No.45/86/97-P&PW(A) Part-II dated the 27th October, 1997 and shall be treated as basic pension for the purpose of grant of Dearness Relief in future." (emphasis added)

17.Ministry of Railways issued instructions of 29.12.1999 looking into various representations and it was mentioned that running allowance is not to be taken into consideration after re-fixation of pay on notional basis on 1.1.1986. The operative part of the same reads:

> "(i) Running Allowance is NOT to be taken into consideration after fixation of pay on notional basis on 1.1.86 in terms of DOP&PW's O.M. No.45/86/97-P&PW(A) Pt.III dtd. 10.2.98 circulated vide Board's letter No.F(E)III/98/PN1/2 dtd 10.3.98;
>
> (ii) Running Allowance is also NOT to be added to the minimum of the revised scale of pay as on 1.1.96 in cases where consolidated pension/family pension is to be stepped up to 50%/30% in terms of Board's letter No.F(E)III/98/PNI/29 dtd 15.1.99."

18.Before getting into different orders that had been passed by this Tribunal, we refer with advantage to the orders of the Government of India particularly of 19.12.2000 in which following clarification had been given:

1.Stagnation increment – whether stagnation increment is to be taken into account while fixing pay of retired Govt. servants on notional basis.	In so far as employees who retired prior to 1.1.86, their pension is required to be updated by fixing their pay as on 1.1.86 by adopting the same formula as for serving employees and as per CCS (RP) Rules. Stagnation increment if any earned by pre-86 retirees should be taken into account for the purpose of notional fixation. Such of those pre-86 retirees who retired after having drawn pay at the maximum of the scale as per IIIrd CPC for a year or more will be entitled to an additional increment as per IVth CPC scales as on 1.1.1986 (proviso 3 to rule 8 ibid). Similarly for those have received an adhoc increment on their stagnation at the maximum for two years or more at the time of their retirement will also be entitled for an additional increment as on 1.1.1986 (Proviso 4). This in effect will mean that pre-86 retirees will be treated as if they were in service on 1.1.86 for the purpose of notional fixation of pay so as to

	ensure complete parity.

19. This question about how to fix the pension has been agitating the mind of this Tribunal in different petitions. In OA 02/2001 (Lucknow Bench), decided on 16.7.2001 entitled G.C.Mitra v. Union of India & Others, certain persons who were similarly situated complained about reduction of their pension. The petition was dismissed holding:

> "In view of the conspectus of facts discussed in the preceding paragraph we are of the considered opinion that the reduction in the pension of the applicant w.e.f. June 2000 from Rs.6152/- which was inclusive of dearness relief to Rs. 4527/- was in order and since the reduction was made to rectify an error committed because of inadvertence, there was no requirement of giving an opportunity of being heard or giving a notice to the applicant before rectifying the error. The reliance placed on behalf of the applicant in the case of Bhagwan Shukla Vs. Union of India AIR (1994) SC page 2480 does not support his case because in the case of Bhagwan Shukla, the pay of the applicant was wrongly fixed on account of administrative lapses and wrong fixation of pay had continued for a period of 20 years. In the light of this fact the apex court held that the pay of the applicant cannot be reduced on the plea that it was initially wrongly fixed twenty years ago without giving the applicant a show cause notice affording him an opportunity of hearing. Thus the Hon'ble Supreme Court held in this case that principles of natural justice have been violated. In the case of the applicant to the present OA, the wrong fixation of his notional pension was made on account of a clerical error caused by inadvertence in as much as the benefit of 75% of running allowance which was admissible w.e.f. 1.11.85 was given to the applicant twice once on 1.11.85 and again on 1.1.86. Since this was an inadvertent error and conferred the same benefit on the applicant twice, the same could be rectified without giving a show cause notice or an opportunity of hearing. Reference in this regard may be made to the following decisions of the apex court:-
>
> (1) State of Madhya Pradesh Vs. Mahesh Kumar (1998) 1 AISLJ 191, Supreme Court
>
> (2) Punjab State Electricity Board Vs. Baldev Singh (1998) 5 SCC page 450"

20. It is obvious from the reasoning of the Lucknow Bench of this Tribunal that it proceeded on the premise that there was a clerical mistake. Other aspects

had not seriously been gone into which are being agitated before us. Therefore, the cited decision is of little help to either side.

21.In the Principal Bench in O.A. 980/2000 entitled Sarju Prasad v. The Chairman, Railway Board and Others decided on 23.10.2001, the same controversy had again been re-agitated. This Tribunal rejected the petition holding:

> "10.The learned counsel of the applicants admitted that the component of running allowance has to be taken into consideration for computing pension only once. If it has been taken into consideration while fixing the pension of the applicants before 1.1.1986 at the time of their retirement, it will not be taken into consideration again any time after 1.1.1986. The learned counsel stated that earlier on prior to 1.1.1986 running allowance up to 75% had not been taken into consideration for calculating pension, therefore, the applicants are demanding that running allowance up to 75% should be taken into consideration after 1.1.1996 and thereafter.
>
> 11.On being specifically asked to refer to documents to prove whether or not running allowance up to 75% had been taken into account prior to 1.1.1986, a sorry figure has been cut on behalf of the applicants. They have not been able to show the PPOs or any other documents indicating calculations on the basis of high pension was fixed for the applicants prior to 1.1.1986. The learned counsel of the applicants stated that most probably the component of running allowance taken into account for fixation of pension of the applicants at the time of retirement was less than 75% and not 75%. He conceded that component of running allowance to be reckoned with for purposes of computing pension has to be a one-time measure; if that had been taken into consideration initially while computing pension immediately after retirement, then it cannot be taken into account over again."

22.The Tribunal thus proceeded on the premise that the benefit is being claimed twice over which could not be so done. It relied upon the case of G.C.Mitra referred to above already.

23.In OA 829/PB/2000, decided on 8.4.2003 entitled Baldev Krishan v. Union of India & Others, the Chandigarh Bench of this Tribunal held:

"Therefore, we have not doubt in our mind that the Govt. has to keep in mind its resources while giving benefits of increased pension to earlier retirees. However, it should keep in mind that the particular date for extending a particular benefit of the scheme has been fixed on an objective and rational consideration. As mentioned above, we are clear in our mind that the Govt. has used a rational consideration for distinguishing between the three categories of pensioners mentioned above, keeping in mind the financial crunch faced by it. We, therefore, find no merit in the argument that all pensioners must get identical increases of pension or the same formula should be used for computing their revised pension. In terms of the judgements cited above, such differentiation can be made by the Govt. We are not going into the details of the difference in family pension worked out by the applicants in their efforts to show that they have been discriminated very badly, specially for family pension, because the argument that applies for pension also applied for family pension."

24.Perusal of the cited judgment shows that the facts gone into were as to if fixation of pension has been done rightly or not. The petition failed keeping in view the fact that Government has to keep in mind its resources while giving benefits of increased pension to earlier retirees. The Scheme had to be fixed and all pensioners cannot get identical increases. In principle, while there is little dispute, we find that this is not the question before us. The question agitated was as to how the pension has to be fixed.

25.A direction as to how the pension has to be fixed was given by the Principal Bench of this Tribunal in the case of S.R.Dhingra v. Chairman, Railway Board & Others (O.A.No.2425/2000), decided on 22.1.2002. The same reads:

"10. Having regard to the discussion made above, we find that it is obligatory on the part of the respondents to update the pay of the applicants as if they were in service on 1.1.1986 on a notional basis and then calculate their pension as on 1.1.1986. For this purpose, as per the relevant instructions, they will take into consideration the average emoluments on the basis of their average pay, DA, DP and IR which the applicants were drawing at the time of their retirement and 20% of the basic pay without reckoning the running allowance of 75%. After fixing the notional pay in this manner as on 1.1.1986, they will add the element of 75% of running allowance. The sum so arrived at shall form the basis for fixing pension as on 1.1.1986, as per relevant rules and instructions. Accordingly, we quash and set aside the impugned R.B.E. No.318/99 dated 29.12.1999 (Annexure R-8) and direct the respondents in terms of

the observations made above. The respondents shall also refund the recoveries made, if any and if due, from the pension of the applicants on reduction in their pension. The respondents shall implement these orders within a period of three months from the date of communication."

26. The findings of the Principal Bench reproduced above were not agreed upon by the Ernakulam Bench in the case of John Kunchandy v. Union of India & Others (O.A.No.278/2001), decided on 2.1.2003. The reasoning for taking a different view was:

"16. We find from the above that the running allowance taken for the purpose of average emoluments is the actual running allowance received by the applicant during the month limited to 75% of the other emoluments. This would indicate that the running allowance was a fixed amount. The Principal Bench of this Tribunal in the order in O.A. 2425/00 has directed addition of 75% notional pay as running allowance. We find from the DOP&T's OM dated 19.12.2000 reproduced by us above that the same had only laid down how the notional pay as on 1.1.1986 of the retired employees had to be arrived at. The said OM had not laid down how the pension for the purpose of consolidation on 1.1.1996 is to be worked out. That had been laid down by the DOP&T's OM dated 10.2.98 circulated by Railway Board by A1 letter dated 10.3.98. We had extracted the relevant portion of the said OM dated 10.2.98 earlier. From the underlined portion of the extract it is evident that the notional pay arrived at as on 1.1.1986 will be the 'average emoluments' for the purpose of computing the pension which is to be taken for the purpose of revision from 1.1.1996.

17. Further the applicant is not entitled for any arrears of the pension on the basis of pension thus fixed for the period from 1.1.86 to 31.12.95. It is only for consolidating the pension as on 1.1.96. That is to say from 1.1.1996 the employees who had retired prior to 1.1.1986 would get the revised pension. It is for the Government to decide how the pension is to be revised after the Fifth Pay Commission Report and the Government had decided how it had to be done by the OM dated 10.2.1998. Railway Board's A-14 letter dated 29.12.99 was only reiterating what is contained in OM dated 10.2.98. Even with the quashing of the letter dated 29.12.99 the OM dated 10.2.98 still stands and now action is to be taken for consolidation of pension from 1.1.96 is to be done only as per the said OM. The Presidential order issued on 10.2.98 by A1 OM issued by the Department of Personnel is very categorical that the notional pay arrived as on 1.1.86 would be treated as the average emolument for the purpose of calculation of pension and accordingly pension would be calculated as on 1.1.86 as per pension formula prescribed. Nothing had been produced before us to show that for the purpose of fixation of pay as on 1.1.86 the running allowance has to be taken into account."

27. Lastly our attention has also been drawn to the decision of the Mumbai Bench of this Tribunal in the case of All India Retired Railwaymens' Association v. Union of India and others (O.A.No.580/1999), decided on 16.7.2003 wherein the Tribunal felt not appropriate to interfere. It is in this backdrop, that the controversy has to be resolved.

28. We have heard the parties' counsel and gave our anxious consideration to the detailed submissions made at the Bar.

29. During the course of argument, there was a ranging controversy as to if the applicants are claiming double benefit of the running allowance. On behalf of the respondents, it was emphasized vehemently that the applicants have been given the benefit of 75% of the running allowance while calculating their notional pay and resultantly the pension. Now they cannot be granted the same benefit all-over again. On the contrary, the applicants pointed that they have not been given such a benefit and in fact, vide the orders which are being impugned, their pension is reduced to more than Rs.1500/- per month as against those who superannuated after 1988.

30. At the outset, it must be made clear that the double benefit of running allowance indeed cannot be granted. It is neither in the report of the Fifth Central Pay Commission nor in any of the notifications or the office memorandums. In our considered opinion, this is a misconceived notion of either side. Necessarily, the same has to be calculated in terms of the recommendations of the Fifth Central Pay Commission which has been accepted, followed by different office memorandums which we have reproduced above mostly in extensio.

31. The Ernakulam Bench while differing from the view taken by the Principal Bench in the case of S.R. Dhingra (supra), had opined that the office memorandum dated 19.12.2000 had only laid down that notional pay as on

1.1.1986 in respect of retired employees has to be arrived at and it does not provide as to how pension for purposes of consolidation has to be worked out. It also opined that the Department of Personnel & Training Office Memorandum of 10.2.98 provides that notional pay arrived at as on 1.1.1986 in terms of the said O.M. will be the average emoluments given for purposes of computing the pension. In accordance with the notification of 29.12.1999, the pre-86 retirees are not entitled to any arrears of pension. In our considered opinion, the said reasoning of the Ernakulam Bench cannot be sustained. The notification of 19.12.2000 specifically provides that pre-86 retirees will be treated as if they were in service on 1.1.1986 for purposes of notional fixation of pay to ensure complete parity. The main recommendation of the Fifth Central Pay Commission regarding total parity between pre-86 and post-86 retirees had been accepted by the Government of India. In case the pension of pre-86 retirees is worked out in accordance with the notification of 29.12.99, there will be no parity as was demonstrated and the post-86 retirees would be getting Rs.1500/- to 2000/- per month more as a pension. Even otherwise, the notification of 10.2.1998 issued by the Department of Personnel was in pursuance of the recommendations of the Fifth Central Pay Commission in regard to total parity between pre-86 and post-86 retirees. This notification did not deal with the running staff because the said staff was entitled to the running allowance. In fact the office memorandum of 10.2.1998 specifically provides that they had to be treated as if they were like those persons who retired on or after 1.1.1986. This decision of the Department of Personnel accepted by the Ministry of Railways, provides for total parity between pre and post-86 retirees. Therefore, the reasoning of the Ernakulam Bench indeed can hardly be accepted as recorded in the order of reference.

32. We have noted above that the Supreme Court in the case of Chairman, Railway Board v. C.R. Rangadhamaiah (supra) has emphatically held that those persons who retired before 5.12.1998 should not be deprived of 75% of the running allowance because the amendment in Indian Railway Establishment Code could not be retrospective in nature. Thus the applicants who belong to the category who had retired before the specified date, could not be deprived of the 75% of the running allowance.

33. In fact the Fifth Central Pay Commission, recommendations of which have been reproduced above, clearly granted complete parity pertaining to pension of those who retired before 1986. Once the said report was accepted and subsequent office memorandums also recognized the same, any other office memorandum or instruction which runs counter to the same and deprives the parity in this regard, can hardly be so appreciated. They would run counter to the main decision. Subsequent office memorandum, when it fumbles and falters at a stage of fixation thus cannot be accepted. To that extent, the other office memorandum which deprives the applicants of the said benefit, can hardly be so sustained.

34. We take liberty in this regard in referring to the decision of the Delhi High Court in the case of Dr.K.C. Garg and others vs. Union of India and others (C.W.P. No.7322/2001) decided on 18.5.2002. In the cited case, the petitioners before the Delhi High Court were retired doctors. They were working in Central Health Service (CHS). While working in various posts in the CHS, they used to get non-practicing allowance. This was being paid to compensate them for loss of private practice and late entry into service. While running allowance of the railway employees with which we are dealing, non-practicing allowance was used

to be granted in certain percentage drawn by the petitioners while in service. The Third Pay Commission had observed that non-practicing allowance granted to doctors was traditionally enjoyed as a privilege. The Fifth Central Pay Commission provided for non-practicing allowance to be granted at a uniform rate of 25% of the basic pay. So far as pre-1986 retirees were concerned, their pension after the Fifth Central Pay Commission, was to be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees. The Government of India had laid down criteria for revision of the pension. On 29.10.1999, the Government of India came with a decision that non-practicing allowance should not be taken into consideration after re-fixation of the pay on notional basis. Thus the petitioners filed an O.A. in this Tribunal which was dismissed on 5.10.2001. They challenged the order of this Tribunal in the Delhi High Court. The Delhi High Court set aside the order passed by this Tribunal and held:

> "9.0 The Central Government in issuing the impugned Office Memorandum also overlooked the Office Memorandum dated 10.02.1998 wherein it was clearly stated that the same had been issued to implement the recommendations of the 5th CPC, which was accepted by the Government of India in terms of its resolution dated 30.09.1997. It was stated therein:-
>
> "..... The notional pay so arrived as on 01.01.1986 shall be treated as average emoluments for the purpose of calculation of pension and accordingly the pension shall be calculated as on 01.01.1986 as per the pension formula then prescribed."
>
> 9.1 It is, therefore, evident that by reason thereof upon re-fixation of pay of pre 01.01.1986 retirees as per the revised pay-scale from 01.01.1996 is to be determined and consequently pensions have to be re-determined on the same formula as was in existence on post 01.01.1986 retirees. Such a re-fixation of pay was merely a step for re-determination of pension having regard to the formula applied therefor as was in operation after 01.01.1986, which included the element of N.P.A. as the revised rates from 01.01.1986.
>
> 10.0 At this juncture, we may notice that the bold stand taken by the respondent that a pensioner is a pensioner and no

discrimination can be made between a Doctor pensioner and Engineer pensioner. The submission of the learned counsel cannot be accepted for more than one reason. The amount of pension to be determined as a retiral benefit depends upon various factors. It is one thing to say that the Central Government has decided to implement to the effect that all retirees would be treated alike with reference to the economic condition of the State vis-à-vis the buying capacity of the pensioners, but it is another thing to say that all categories of the employees were not to be paid pension at different rates.

10.1 The learned counsel for the Central Government, on a query made by this Court, very fairly stated that N.P.A. shall be taken to be a part of pay for post 01.01.1996 retirees. If N.P.A. is to be taken to be a part of pay for re-determining the benefit for Class I employees, we fail to see any reason as to why the said element despite recommendations of the 5th CPC and acceptance thereof by the Central Government has to be excluded for pre 01.01.1986 retirees. The Central Government, therefore, are prevaricating their stand.

10.2 For determination of the said question what is necessary is to find out the principle and object underlying such recommendations. Once it is found that the underlying principle and object of the said recommendations was to bring pre 01.01.1986 retirees and post 01.01.1986 retirees at par as well as on a common platform, the rule is required to be interpreted in that context.

10.3 It is difficult for us to accept the contention that despite the fact that N.P.A. shall form part of pay so far as post 01.01.1996 retirees are concerned, the same would not form part of pay despite provisions in the Fundamental Rules so far as pre 01.01.1986 retirees are concerned. The 5th CPC has taken into consideration, as noticed hereinbefore, the history of grant of N.P.A. and wherefrom it is evident that N.P.A. became part of pay."

35. Identical is the position herein. Necessarily, the pension has to be drawn keeping in view the parity that has to be so maintained. The pension so fixed would not be re-fixed to the disadvantage of the railway servants. In accordance with the said office memorandums, it was obligatory on the part of the respondents to update the pay of the applicants as if they were in service on 1.1.1986. Thereafter, their pension had to be calculated as on 1.1.1986 as per the relevant instructions. They should take into consideration the average pay,

60

Dearness Allowance, Dearness Pay and Interim Reliefs that they were drawing at the time of their retirement and 20% of the basic pay without reckoning the running allowance of 75%. After fixing the notional pay as on 1.1.1986, they should add the element of 75% of the running allowance and the sum so arrived at, should form the basis for fixation of pension as on 1.1.1986, as per rules and the instructions. We, therefore, approve the view taken by the Principal Bench in the case of S.R. Dhingra (supra) whereby R.B.E. No.318 of 29.12.1999 was quashed.

36. Accordingly, we answer the reference as under:

> In view of the reasons recorded, we approve the decision of the Principal Bench of this Tribunal in O.A.2425/2000 (S.R. Dhingra and others vs. Chairman, Railway Board and others) and overrule the view taken by the different other Benches to the contrary. Since this was the only question referred and agitated before us, we deem it unnecessary that the matter should again be listed before the concerned Benches. Resultantly, we dispose of the petitions in view of the reasons recorded above, directing that pension of the applicants in different OAs should be re-fixed and arrears, if any, should be paid to them preferably within four months of the receipt of the certified copy of the present order."

(M.A. Khan)
Vice Chairman(J)

(V.K. Majotra)
Vice Chairman(A)

(V.S. Aggarwal)
Chairman

/dkm/