(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.621/2000
with
OA No.624/2000
OA No.625/2000
OA No.626/2000
OA No.914/2000
OA No.970/2000

New Delhi this the 05th day of December, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mr. Govindan S. Tampi, Member (A)

Dr. Sukumar Chatterjee etc. etc. ....Applicants

(By Advocate Sh. S.K. Ray, Sh. Parveen Khatter, Sh. Abhey N. Das) Sh. E.X. Joseph, Sr. Counsel, with Sh. S.S. Sachdeva)

-Versus-

Union of India & Others ....Respondents

(By Advocates Sh. K.C.D. Gangwani, V.S.R. Krishna, Mrs. P.K. Gupta and Sh. Ram Kanwar)

1. To be referred to the Reporter or not? YES/~~NO~~

2. To be circulated to other Benches of the Tribunal? YES/~~NO~~

(Govindan S. Tampi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 621/2000
with
OA 624/2000
OA 625/2000
OA 626/2000
OA 914/2000
OA 970/2000

(10)

New Delhi, this the 5th day of December, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

Present : Sh. S.K.Ray, counsel for the applicant in OA 621, 624, 625, 626, 970/2000

Sh. E.X.Joseph, Sr. counsel with Sh. S.S.Sabharwal, counsel for the applicant in OA 914/2000

Sh. K.C.D. Gangwani, counsel for the respondents No. 1,3 & 4 in OA No. 621/2000.

Sh. V.S.R.Krishna, counsel for the respondents ~~No~~ in OA No. 624, 625, 626 and 970/2000 and respondent No. 2 in OA 621/2000 and respondent No. 1 & 2 in 914/2000.

Sh. Ram Kawar , counsel for the respondent No.3 in OA No. 914/2000.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 621/2000
with
OA 624/2000
with
OA 625/2000
with
OA 626/2000
with
OA 914/2000
with
OA 970/2000

New Delhi, this the 5th day of November, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

OA 621/2000

Dr. Sukumar Chatterjee, aged about 65 years,
S/o Late L.K.Chatterjee, R/o C-301, Purvasha
Anandlok Coop. Group Housing
Society Ltd., Mayur Vihar Phase-I,
Delhi - 110 091.

...Applicant

OA 624/2000

Dr. (Mrs.) Vinodini Soni, aged about 66 yrs.
W/o Shri Y.R.Soni, R/o D-84, Kalkaji
New Delhi - 110019.

...Applicant

VERSUS

1. Union of India, Ministry of Communication,
Department of Posts, Postal Accounts Wing,
PEA Branch, Dak Bhawan,
Sansad Marg, New Delhi - 110001
through its Secretary

2. Union of India, Ministry of Health and Family
Welfare, Deptt. of Health, Nirman Bhawan,
New Delhi - 110011
through its Secretary

3. Union of India, Ministry of Personnel/Public
Grievances & Pensions, Deptt. of Pension and
Pensioner's Welfare, Lok Nayak Bhawan, Khan
Market, New Delhi - 110003
through its Secretary,

4. Union of India, Ministry of Finance,
Deptt. of Expenditure, New Delhi - 110001
through its Secretary.

...Respondents.

OA 625/2000

Dr.(Mrs.) Dhruba Lahiri, aged about 67 yrs
W/o Dr. A.K.Lahiri, R/o 70, Shivalik Apptts,
Alaknanda, Kalkaji, New Delhi - 110019

...Applicant

(12)

OA 626/2000

Dr. Ajit Kumar Datta aged 66 yrs
S/o Late Dr. A.C.Datta, R/o 151, Shivalik
Apptts., Alaknanda, Kalkaji, New Delhi -
110019.

...Applicant

OA 970/2000

Dr. Amaresh Das Sharma aged
about 63 yrs., S/o Late HR Das Sharma
R/o J-58/F4, Dilshad Colony
Delhi - 110095.

...Applicant

V E R S U S

1. Union of India, Ministry of Health and Family
   Welfare, Deptt. of Health, Nirman Bhawan,
   New Delhi - 110011
   through its Secretary

2. Union of India, Ministry of Personnel/Public
   Grievances & Pensions, Deptt. of Pension and
   Pensioner's Welfare, Lok Nayak Bhawan, Khan
   Market, New Delhi - 110003
   through its Secretary,

3. Union of India, Ministry of Finance,
   Deptt. of Expenditure, New Delhi - 110001
   through its Secretary.

OA 914/2000

Dr. M.P.Srivastava
Director Professor and Head Medicine &
Cardiology,
University College of Medical Science and
G.T.B. Hospital, Delhi (Retd.)
175, S.F.S. Munirka Vihar, Opp. JNU
New Delhi - 110067.

...Applicant

V E R S U S

1. Union of India, Ministry of Health and Family
   Welfare, Nirman Bhawan,
   New Delhi - 110011
   through its Secretary

2. Union of India, Ministry of Personnel/Public
   Grievances & Pensions, Deptt. of Pension and
   Pensioner's Welfare, Shastri Bhawan,
   New Delhi, through its Secretary,

3. Pay & Accounts Officer, (XV-HOSP),
   Pay & Accounts Office,
   3rd Floor, M.R.D. Building
   Lok Nayak Hospital,
   New Delhi - 110002.

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ORDER

Shri Govindan S. Tampi.

This combined order disposes of six original applications, as the issue calling for decision in all the matters is the same - the inclusion or otherwise of non-practice allowance while computation of pensionary benefits. The applications were also heard together. When common arguments were raised from both sides. Hence this common disposal.

OA No. 621/2000

2. Dr. Sukumar Chatterjie, the applicant in this OA joined Central Health Service on 21-3-1962 as Senior Medical Officer at Dandakaranya Project. He held successive assignments as Sr. Epidemiologist with W.H.O., Medical Officer, Lal Bahadur Shastri National Academy, Mussorie, till 1981, Deputy Assistant Director General in the Directorate General of Health Service, Ministry of Health and Family Welfare, December 1981 to 1985 again as a WHO Expert as Airport Health Officer, Medical Officer of Health in NDMC, again as Expert from the WHO. At the time of his retirement on completion of the qualifying service, on he was working as Deputy Director General (Medical) in the Department of Telecommunications in the Gr. of Rs. 5900-6700/-, equivalent to that of Joint Secretary to the Government of India. As he was not permitted to private service during the tenure of his service, he was granted non-practicing allowance (NPA) as a part of his pay. At the time of his retirement from onwards, he was given a pension of Rs.

3630/- per month, based on the basic pay of Rs. 6300/- + NPA of Rs. 1000/-. The benefit of inclusion of NPA was, however, denied while implementing the 5th Central Pay Commission's recommendations w.e.f. 1-1-96, disregarding the provision in Central Civil Service Pension Rule, 1972 and Fundamental Rules, 1922. In terms of President's decision, the Ministry of Finance, Deptt. of Expenditure had under its U.O. No. 7 (25) X-III A-97 dated 7-4-98, directed that NPA @ the 25 % of the basic pay subject to the condition that Pay+NPA does not exceed Rs. 295000/- shall count as pay to all benefits as hitherto in the case of CGHS Doctors. This was also communicated to all participating units of Central Health Services. Further, on 17-12-98, Department of Pension and pensioner's Welfare in the Ministry of Personnel on 17-12-98 communicated that the 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, last held by the pensioner. However, in the case of the applicant, the pension was sought to be fixed at Rs. 9200/- per month, i.e. 50% of the minimum of the revised scale of pay of Rs. 18400 - 22400/-, on the basis of the letter F.No. 45/10/1998-PNPW (A) dated 17-12-98 of the Department of Pension & Pensioners Welfare, working out from the pension of Rs. 3630/- fixed 13-10-92. The applicant filed a representation on 11-3-99 requesting for the correct revision of pension at Rs. 11,500/- p.m., being 50 % of the minimum of the basic pay of Rs. 18,400+N.P.A. of Rs. 4600/- i.e. Rs. 23,000. This was followed by another reminder on 16-8-99. In the

meanwhile, OM No. 45/86/97-P & PW (A) part III dated 19-3-99, issued by the Department of Pension and Pensioner's Welfare, while clarifying a number of issues, directed among others that special pay deputation allowance, personal pay, which have not been treated as emoluments for the purpose of fixation of notional pay under Central Civil Service (Revised Pay) Rules 1986 could continue to treated as emoluments, and indicated that the expression emoluments meant basic pay defined in rules 9 (21) (A) (i) of the Fundamental Rules which a Government servant was receiving immediately followed his retirement or the date of his death which included NPA granted Medical Officers. The applicant also sent a copy of his representation to the Cabinet Secretary, Personnel Grievance Cell, pointing out that retired doctors similarly placed like him, in the Ministry of Health and Family Welfare and DGHS organisation had got the pension fixed at Rs. 11,500/- including the allowance of NPA, which was denied to him. This representation has been turned down. The applicant was subsequently informed on 16-9-99, that his case was taken up among those of others for clarification with the Department of Pension and Pensioners Welfare. On 8-12-99, he was informed that in terms of clarification from the Department of Pension and Pensioners 29-10-99 NPA was not to be added to the minimum of the revised scale of the pay as on 1-1-96 his consolidated pension stepped up to the 50% in terms of OM dated 17-12-98, as clarified on 29-10-99. The said communication observed that NPA granted to Medical Officers did not the part of the scale of the pay but was a separate element although it was taken

into account for the purpose of computation of pension. However, this was not to be added to the minimum of the revised scale of the pay . According to the applicant, while NPA was not a integral part of the scale of pay, it was deemed to be a pay in lieu of private practice. For the purpose of retirement benefits which constitute a deferred anxiety for the Medical Officers who had forfeited the benefit of private practice while serving the Govt. and the decisions of the Govt. was harsh and incorrect. All the more so, Medical Officer of Central Health Services cadre who had retired in 1997 were given the benefit of inclusion of NPA in the computation of pensionary benefits. This amounted to hostile discrimination, according to the applicant. discrimination.

3. The grounds taken by the applicant are summarised as below :-

(a) Pay Commission's recommendations regarding consolidation of pension of all pre 1996 retirees subject to the 50% of the minimum of the revised pay of the post held by the pensioners at the time of his retirement has been accepted by the Government with a different interpretation.

(b) Govt. decisions on 17-12-98 states that the pension shall not be less than 50%, of the minimum of the scale of the post, but the ceiling was only that it should not exceed Rs. 29,500.

(c) As the pension of the applicant is referable to the pay in a scale of pay, whether old or revised. It is doubtful whether the pension is referable as distinct from pay. Pay means the amount drawn monthly by the Government servant as pay other than special pay or pay granted in view of his personal qualification. Therefore, the impugned

indicating NPA as a separate element, not to be treated as a part of the pay is violative of Rule 9 (21) (a) (i) & (iii) of the Fundamental Rules.

(d) The applicant was correctly entitled to pension as per rule 33 of the CCS (Pension) Rules, 1972, on the basis of average emoluments, in terms of rule 34 ibid. Therefore, he should have been granted 50 % of the emoluments for pension. This should have been worked out including NPA granted to him. The clarificatory order of 29-10-99 denying this was illegal malafide and violative of the (Pension) Rules.

(e) The impugned order discriminates the pre-1996 pensioners vis-a-vis the post 1996 pensioners who are given the benefit.

4. Reliefs sought by the applicant, therefore, are as below :-

b) Quash and declare the order OM No. 45/3/99 - P PW (A) dated 29-10-99 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension & Pensioners Welfare which is illegal, malafide, void ab - initio in the facts and circumstances of the case and order No. 52-117/98-PA (PEA) / 1481 dated 8-12-99 issued by the Govt. of India, Ministry of Communications, Deptt. of Post, Postal Accounts Wing, PEA Branch, DAK Bhavan, New Delhi.

c) Direct the opposite parties not to proceed to implement the impugned order against the applicant while refixing his pension on the basis of 5th Central Pay Commission Report for pensioners and treat his case of re-fixation of pension alike the post 1996 retirees.

5.1 OA 624/2000

5) The applicant, Dr. Mrs. Vinodini Soni, joined the Central Health Service on 1-2-1966 as a Medical Officer in ESIC Dispensary and was transferred to P&T Dispensary at Meerut, where she worked till 21-7-1971. After her transfer to Delhi she was Medical Officer/Chief Medical Officer. On 31-7-92,

following her retirement as the Sr. Chief Medical Officer in CGHS, Delhi, her pension was fixed, keeping in mind the basic pay of Rs. 6300/- and the NPA of Rs. 1000/-. However, while refixing her pension on the implementation of the recommendations of the 5th Pay Commission, inclusion of NPA while calculating pension was denied to her.

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5.2 OA 625/2000

The applicant Dr. (Mrs.) D.Lahiri, who joined CHS 13-4-58 as Medical Officer/Civil Assistant Surgeon I in NEFA worked there till January 1972 and then came to meerut as Deputy Assistant Director, CGHS. She was transferred to Delhi in June, 1976 and held a number of charges in the CGHS and DGHS. She ultimately retired on 31-3-91 in the Sr. Administrative Grade Post. On her retirement w.e.f. 1-4-91, she was granted a pension of Rs. 3438/-, keeping in mind the component of NPA also as a part of the pay for the purpose of computing of retiring benefits. Following the adoption of the Fifth Central Pay Commission's recommendations, she was granted pension @ Rs. 11,500/- p.m. w.e.f. 1-1-96, which was subsequently sought to be modified in terms of the impugned O.M. dated 29-10-99.

5.3 OA 626/2000

Dr. Ajit Kumar Datta, the applicant, who joined CHS as Medical Officer on 21-11-1959 worked in many capacities and finally retired as Deputy Director General (Planning) in the Directorate General of

Health Service and was granted pension of Rs. 3,497/- which was revised to Rs. 11,500/- w.e.f. 1-1-96 under the OM dt. 1-7-99. The same fixation is sought to be revised downwards by the impugned OM dated 29-10-99.

5.4 **OA 914/2000**

Sh. M.P.Srivastava, the applicant, and a Member of the CHS who retired as Director/Professor of Medicine and Head of the Department of Medicine and Cardiology on 31-10-93 was on retirement granted a pension of Rs. 8,418/- from 1-11-93 which was revised to Rs. 11,152/- from 1-1-96. By another order, the pension was revised downwards w.e.f. 1-1-96 to Rs. 8,922/- without issuing any noticeto him in accordance with the impugned order dated 29-10-99. An amount of Rs. 1,34,031/- which was described as excess payment was also ordered to be recovered from him.

5.5 **OA 970/2000**

Dr. Amresh Das Sharma, the applicant, who joined Central Health Services Scheme on 1-6-93 worked in various organisations and finally came to the Ministry of Health Family Welfare and retired as Additional Medical Superintendent of LNJP Hospital on 31-1-95. W.e.f. 1-2-95 on his retirement, he was granted pension @ 3670/- per month, which was revised to Rs. 11,500/- w.e.f. 1-1-96. Following the issue of OM 29-10-99, the above revision was nullified.

5.6

Hence the above six applications. The Pleas made on behalf of all the applicants are substantially the same.

6. On behalf of the respondents in the case of Dr. Sukumar Chatterjie in OA No. 621/2000, it was indicated that at the time of his retirement 31-9-92 his pension was fixed at 3630/- and his family pension at Rs. 1095/- taking into account his average emoluments at Rs. 7260/- per month which included the component of NPA @ Rs. 1000/- P.M. While calculating the pension/family pension of the applicant NPA was duly taken in to account, being a integral part of emoluments for computation of pension/family pension. Following the adoption of the recommendation of the 5th Pay Commission, his pension was consolidated at Rs. 8980/- and in terms of Deptt. of Pension and Pensioners Welfare OM dated 17-12-98 to the effect that the pension shall not be less than 50% of the minimum of the revised pay scale it was stepped to Rs. 9200/- which was half of the minimum pay of the Grade of Rs. 18400-22400, in conformity with the clarificatory orders 29-10-99. It is pointed out that 5th Central Pay Commission has recommended complete parity on 1-1-86 and modified parity thereafter. Accordingly notional fixation of pay on 1-1-96 of all pre-86 retirees and consolidation thereafter was directed and following the orders of 17-12-99 wherever consolidated pension fell below 50% of the minimum of the revised scale of pay as on 1-1-96, the same was stepped up to 50 %. In this case of modified parity,

there was no notional fixation of pay, as on 1-1-96 and the OM of 19-3-99 was not relevant for stepping up of the consolidation of pension as on 1-1-96. Consolidation of pension was in terms of the OM 27-9-97 which included basic pension + IR + IR2 + 40 % allowance and the basic pension included in NPA at the first stage itself. As NPA has once been taken into account as part of emoluments while computing pension and this is also reflected in the consolidation of the pension in terms of the formula suggested for the purpose, there was no question of granting it once again. The Deptt. of Pension and Pensioner's Welfare's OM of 29-10-99 has already clarified that NPA is not to be added in the process of stepping up the pension up to 50 %, and, therefore, the contention of the applicant was incorrect. While Govt. of India's order below FR. 9 (21) NPA counts as the pay for the benefits, it would be with reference to payment the amount drawn monthly by the Govt. servants as pay which has been sanctioned for the post held by him. Unless the pay is drawn it cannot be taken for any purpose. Pay and NPA were drawn by the applicant was taken into account for computing the pension at the time of his retirement and as NPA was not drawn on revised pay of the 5the Pay Commission, the applicants having already left the service it cannot count for any purpose. The comparison sought by the applicant with a post 1996 retiree was of no relevance as the latter's pension is much more than 50 % of the minimum scale of pay held by him at the time of the retirement. Rules 33 and 34 in the CCS Pension Rules 1972 deal with emoluments and average emoluments to be taken for computing the pension at the time of

an individual's retirement, which in the case of the doctors included the component of NPA. Accordingly at the time of retirement of the applicant, this had been duly taken into consideration. Therefore, on implementation of 5th Central Pay Commission's recommendations only his initial pension was consolidated, as after consolidation and stepping up, his pay has been stepped up to 50 % of the minimum of the revised scale. There was in the circumstances no reason for the applicant to have any grievance. Further, the applicant's pension/family pension was consolidated in terms of Department's OM 27-10-97 and 17-12-98 as well as clarificatory orders dated 29-10-99. This has no relation with post 1996 retirees in who's case pension is computed and if the pension so arrived at is less than 50 %, it can be stepped up to 50 %. Stepping up of the pay as per OM No. 17-12-98 was alone permissible for pre -1996 pensioners. The applicant's seeking parity with post 1996 retirees was going beyond the recommendations of the 5th Pay Commission and cannot be accepted.

7. Similar replies have been filed on behalf of all the respondents in other OAs as well. In the reply filed in OA 626/2000, it is stated that prior to 1-1-96, pay scales recommended by the 4th Pay Commission and accepted by the Government, the pension of retiree was to be determined with reference to average emoluments drawn by him during the last months of his service which included NPA of Medical Officers and qualifying service for full pension was fixed on 33 years. Following the acceptance of the recommendations of the 5th Pay Commission, the

fixation was to be done in accordance with the Central Civil Service (Revised pay rules 1997) in terms of which OM No. 45/86/97 P & PW (A) dated 27-2-___ decided that the pension/family pension will be consolidated by adding the following components :-

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i) The existing pension/family pension

ii) Dearness Relief upto CPI 1510 i.e. @ 148%, 111% and 96 @ 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.

In its OM dt. 10-2-98 Govt. decided for the revision of the pension for pre-86 pensioners and bring them updated by notional fixation of pay as on 1-1-86, by adopting the same formula as per the serving employees and thereafter for the purpose of consolidation they were to be treated like those who retired on or after 1986. Therefore, all those who retired prior to 1986 and those who died prior to 1986 in respects of whom family pension was being paid on 1-1-86 was to be fixed on a notional basis on revised scale for the post held by the pensioner at the time of his retirement or death. While fixing this

notional basis all the relevant instructions shall be followed, but notional increment admissible in terms of rules in instructions applicable at the relevant date was not to be extended in case of re-fixation. The notional pay as fixed as on 1-1-86 was to be treated as the average emoluments and this was to be consolidated as on 1-1-96 in terms of the Departments OM dated 27-10-97 and was to be treated as the basic pension. Subsequently on 17-2-98, pension of all pensioners in respect of their date of retirement were to be the directed to be stepped up w.e.f 1-1-96 which was not to be less than 50 % of the minimum of the pay scale. In this context, clarification was sought whether NPA admissible in 1-1-86 was to be taken into consideration after refixation of pay on notional basis as on 1-1-86 and whether NPA is to be added while consideration stepping up of the consolidation of the pension, Deptt. of Pension and Pensioner's Welfare clarified that NPA was not to be taken into consideration and once the pay was refixed on the notional basis on 1-1-86, it was not to be added at the minimum of the revised pay scale as on 1-1-96.

8. Keeping in mind the Rule 15 of the CHS Rules, 1982 to which category the applicants belonged private practice was prohibited and NPA was given and it was treated as pay for all matters, including computation of DA, entitlement of TA and DA and for retirement benefits. The NPA admissible to the applicant was taken into considertion while fixing the initial pension. On retirement the applicant ceased to be the Member of CHS, the ban on private practice was lifted and therefore the NPA was not allowable to

them. In the above view, of the things the contention of the applicants that they should be given the benefit of NPA twice, i.e. at the time of their actual retirement as well as w.e.f. 1-1-96 was illogical and unacceptable.

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9. In view of the above the applications deserve to be rejected, is what the respondents urge.

10. Heard the counsel for the applicant and respondents. Sh. S.K.Ray, Advocate was present for applicants in 621, 624, 625, 626, 970/2000 while the applicant in OA 914 was represented by Sh. E.X.Joseph, Sr. Advocate. Sh. K.C.D.Gangwani, Sr. Counsel appeared for the respondent in OA No. 621/2000 and Sh. Ram Kawar in 914/2000. Sh. V.S.R. Krishna represented the respondents in all other OAs.

11. Sh. S.K.Ray, learned counsel for the applicants vehemently argued that the denial of the inclusion of the NPA for the computation of the pensions/ family pension of the Doctors was totally incorrect and unjustified. According to him, the impugned instructions have reclassified the retired Doctors, on the basis of executive instructions which had gone beyond this rules and that too in a retrospective manner. Whereas rules specifically provided that the computation of the pension has to be with reference of emoluments which correctly included NPA, the same was sought to be denied by the executive instructions of October 1999. An invidious distinction has been sought to be created between the post 1996 retirees and the pre 1996 retirees which was

not permissible. Being a responsible employer cannot choose to throw out those like that applicants who have given their best to the Govt. and the country during the prime of their life. Denial of the benefits, given by the statutory rules through executive instructions had caused all the problems, which have to be set aright and the applicants granted their due, urges Sh. Ray.

12. Sh. E.X. Joseph, Sr. Advocate, appearing for the applicant in OA No. 914/2000 in whose case downward revision and recovery of Rs. 1,34,031 have been ordered, argued that the correct interpretation of the Central Civil Service Pension Rules, 1972 (rules 9, 33 & 70) give all protection to the retired doctors and this cannot be taken away by the executive instructions as of 29-10-99. The same deserves to be set aside in his plea. He pleads that the 5th Central Pay Commision has taken a revolutionary step of bringing the earlier retirees on par with the present retirees which was a measure of social engineering and the same should not have been permitted to be washed away by executive instructions and that too without any notice to the affected parties.

13. Sh. K.C.D. Gangwani, appearing for one of the respondents stated that the Govt. has always been fair and continued to be so both in respect of the working employees and those who have retired. According to him, the calculation of pension in terms of rule 33 of the CCS (Pension) Rules was relevant only at the date of retirement of the individual

concerned and the concept of emoluments was also with reference to that particular date and it was not for all time to come, as the applicants seems to suggest. In the case of the applicants, NPA has been included for computing pension at the time of their retirement, during 1986 to 1996 and after 1996 only those who are in service would get the NPA at the revised rates as well as pension including that. As the applicants have been given the benefit of inclusion of the component of NPA once at the time of retirement they cannot ask for this again. NPA was not relevant for any computation at any time after retirement. He also states that rule 70 of the CCS (Pension) cited by the Counsel for the applicant was not relevant in the present circumstances, as the same related to disciplinary proceedings.

14. Fully endorsing and augmenting the points raised by Sh. Gangwani, Sh. V.S.R.Krishna appearing for all the other respondents, added that the petitioner did not have any grievance till the issue of the OM of 29 October, 1999 and as they were getting NPA earlier, after the resolution of the Govt. dated 13-9-97. As they were already getting NPA which was counted at the time of retirement, they cannot have it increased in any other way or brought it as a additional component. Sh. Krishna also states that as the Doctors like the applicant on retirement, are no longer controlled by CGHS and prohibition on their private practice was no longer there, the concept of NPA for retired Doctors could not arise. He also endorsed the view of Sh. Gangwani that the concept of emoluments was applicable only at the time of

superannuation and not thereafter. He produced text of the Ministry of Finance Resolution dated 13-9-97 as well as a note for the Deptt. of Pension and Pension Welfare, in support of the clarifications issued, which would show according to him that the NPA having been taken in consideration at the time of fixing the pension at original stage, it was not to be given twice as prayed by the applicants. In order to stress his claim that NPA did not the part of the pay, he also referred to the decision of the Tribunal in OA 510/94 as well as that of the Hon'ble Supreme Court in the case of Joint Action Council of Service Doctors Association Reporter at 1996 (33) ATC cases 259 stating that NPA cannot be included for arriving the pay for the purpose of obtaining residential accommodation.

15. Replying on behalf of the applicants, Sh. S.K.Ray referred to Pay Commission's para No. 52.6. While conceding that the NPA was not a separate element, it had correctly included NPA in pension keeping in mind the concept of emoluments and subject only to the ceiling that the refixed pay including the component of NPA shall not exceed 29500/-. According to him Rule 7 (1) (d) Revised Pay Rules 1997 was applicable only to serving officers. He also said that the recoveries sought to be made from the certain doctors was not correct, In find he stated that the application should succeed with benefit to the applicants. Sh. Ray also referred to the decisions of Hon'ble Supreme Court in the case of D.S.Nkara & Ors. and of Chairman, Railway Board and ors. Vs. Rangadhamaiah and Ors. against the act of

retrospectively reducing of producing pension, Union of India Vs L.V. Vishwanathan SLA (Law Digest) Dec. 1996 VI (1998) SLT 41.

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16. We have very carefully and with concern deliberated upon the various points of facts and law raised on behalf of the applicant and contested by the respondents. We note with appreciation that the counsel who appeared on both sides have been helpful in facilitating our task.

17. The point for determination is whether while refixing the pension of the medical doctors in terms of the revision of scales, recommended by the 5th Central Pay Commission and accepted by the Govt., the NPA drawn by the doctors should have been included or not and whether the directions of Deptt. of Pension and Pensioner's Welfare O.M. No. 45/3/99-P & PW (A) dated 29-10-99 was correct and proper. The applicants state that NPA being an acknowledged component of average emoluments for computation of pension at the time of the retirement for the medical doctors, inclusion thereof should not have been denied to them, and that too with retrospective effect and without any notice, while retirees similarly placed after 1996 has been extended the benefit. The respondents on the other hand state that the applicants pensions at the time of the retirement have been computed including the component of NPA and there was no case for the same to be added once again, more so as the doctors have already retired and or no longer circumscribed by the prescription against private practice. According to respondents,

therefore, the instructions contained in the OM dated 29-10-99 issued by the Deptt. of Pension and Pensioners's Welfare are correct and merit endorsement.

18. A few concepts would have to be clarified to enable ourselves to give the determination of the issue on hand. First of them, relates to pension and the basis of its computation Rule III (1) (o) describes pension as including gratuity, but not including deerness relief. It is granted to Government servants completing the requisite qualifying period in terms of Rule 48 ibid and it is calculated with reference to the emoluments describe in Rule 33, rule reads as under :-

> The expression 'emoluments' means basic pay as defined in Rule 9 (21) (a) (1) of the Fundamental Rules which a Government servant is receiving immediately before his retirement or on the date of his death and will also include Non Practising Allowance granted to the Medical Officer in lieu of private practice.

Rule 34 states that "Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service". It is evident, therefore, that the emoluments or the average emoluments drawn by the retiring Govt. servants is the basis for calculation of pensionary benefits and that in the case of Medical Doctors who have been receiving Non Practising Allowance (NPA) would also merit inclusion while reckoning the emoluments for arriving at the pension. It is also pertinent to point out that this expression 'emoluments' is with reference to the period

immediately before the retirement of the Govt. servants or on the date of his death. Therefore, if retired Govt. servants is the Medical Officer receiving NPA at the time of his retirement, his total emoluments or average emoluments should have been worked out including the component of NPA. If the same has not done it would be irregular. On examination of the case of the applicants it is found that the component of NPA has been taken into consideration while computing the pensionary benefits at the time of their respective retirements. This is a fact duly admitted by all the applicants before us. It is in this context that the issue will have to be examined.

19. All the above applicants had retired before 1-1-96 on which date, the recommendations of the 5th Central Pay Commission was accepted. The scales of pay of the retired employees being drawn at the time of their superannuation was much less than what have been adopted in terms of the recommendations of the 5th Pay Commission. There has also been appreciable rise in the rate of NPA w.e.f. 1-1-96 i.e. to 25 % of the basic pay in place of Rs. 1000 fixed. The request of the applicants is for getting the benefit of this NPA also included while computing their retirement benefits. According to them pension granted to them before 5th Pay Commission's recommendations were announced, including the component of NPA earlier would merit refixation adding the component of 25 % NPA in terms of the revised scales. The plea of the applicants is that since the

5th Pay Commission had taken a revolutionary step of ensuring the higher pension even for retired officers keeping in mind the revised pay scale in subject to a maximum of 50 % of the minimum of the scale that they should get the benefit of the revised NPA, included in pension subject to the ceiling of Rs. 29,500/-. In fact some units under the Minister of Health and Family Welfare have just done that which is sought to be annotted by the OM dated 29-10-99.

20. Respondents have during the couse of the hearing placed before us a detailed note explaining all the features of the scheme relating to non-practising allowance and its inclusion while computing pensionary benefits. The same is quite exhaustive and is being reproduced below as it describes the issue in its proper perspective.

Subject : Computation of pension and treatment of NPA.

Rule 33 of CCS (Pension) Rules 1972, stipulates the emoluments to be taken into account for purposes of computation of pension. In the case of doctors, emoluments means basic pay as defined in Rule 9 (21) (a) (i) of Fundamental rules and will also include the non-practising allowance granted to medical officers in lieu of private practice.

The V Central Pay Commission had recommended that though complete parity of all past pensioners was desirable this may not be feasible as the financial implications would be considerable. As a sequel to this objective of parity, the Pay Commission recommended that pension of all pre-86 retirees may be updated by notional fixation of pension as on 1-1-86 by adopting the same formula as for serving employees. Thereafter their pension may be consolidated and this consolidated pension may not be less that 50 % of the minimum pay of the post, as revised by VCPC, held by the pensioner at the time of retirement. The

recommendation of complete parity as on 1-1-86 and modified parity on 1-1-96 was accepted by the Govt.

For purposes of complete parity pay was notionally fixed as on 1-1-86. While fixing notional pay on 1-1-86 for all pre-86 retirees, NPA was taken into account. Thereafter as recommended by the Pay Commission the pension so arrived at was consolidated. (The formula recommended was Basic Pension + DR + IR I + IR II + Fitment Weightage of 20 %. The Government accepted the formula with a partial modification of Fitment Weightage which was increased to 40 %) The element of NPA is inherent in the formula suggested for purposes of consolidation of pension as laid down in this Department's OM of 27 October, 1997 as all the elements in the formula are a % of the basic pension. In the case of retirees between 1-1-86 and 31-12-95 no notional fixation was involved as the government servants were already on Fourth CPC scales and in their case their basic pension was only consolidated on the basis of the same formula. The decision on modified parity is contained in this Department's OM of 17 December, 1998. This OM states that the consolidated pension will be stepped upto 50 % of the minimum pay of the revised scale of pay as on 1-1-96 of the post last held by the pensioner at the time of his retirement.

In response to certain clarifications sought by some Ministries we clarified the above order by our OM of 29 October 1999. The later OM stated that NPA was not to be considered after fixation of notional pay as on 1-1-86 and not to be added to the minimum of the revised pay scale while stepping up consolidated pension as NPA had already been taken into account in the case of pre-86 retirees whill notionally fixing their pay and counted as part of emoluments in computing pension in respect of Govt. servants who superannuated between 1-1-86 and 31-12-95.

The position reflected in different OMs is given as under :-

Order & Date	Contents of the order	Justification	Remarks
Cir. No. A-45012/11/ 97-CHS-V dt. 7-4-98	NPA shall count as pay for all service benefits including retirement benefits as hither to.	NPA counted for the purposes of computation of pension both before 1.1.96 and also after 1.1.96.	Deptt. of pension orders also agree in this regard

OM No. 45/10/98 Dt. 17-12-98	Pension shall continue to be calculated at 50 % of the average emoluments in all cases and consolidated pension will be stepped up to 50 % of the min. of the revised scale of pay of the post last held by the pensioner at the time of his superannuation	Emoluments as per Rule 33 of CCS (Pension) Rules and in the case of doctors will include besides basic pay also NPA in lieu of private practice.	Computation formula unchanged.
OM No. 45/8/6/97 Dt. 19-3-99	Emoluments means basic pay as defined in FR 9 (21) (a) (i) and in the case of doctors includes NPA granted in lieu of private practice under Rule 33 of CCS (Pension) Rules.	In keeping with the existing Rule 33 of CCS (Pension) Rules.	Clarificatory order issued for purposes of notional fixation of pay as on 1.1.86 for revising pension in respect of pre-86 retirees.
OM No. 45/3/99 Dt. 29-10-99	NPA is a separate element though counted for purpose of computaion of pension. Not to be considered after re-fixation of pay on notional basis on 1-1-86 or added to the minimum of the revised scale on 1-1-96 for purposes of stepping up consolidated pension	NPA will be considered in in the computation of pension and also in the notional fixation of pay. It is not to be added to the minimum of the revised scale on 1-1-96 as Pay Commission has recommended only modified parity as on 1-1-96.	Pay Commission has recommended complete parity as on 1-1-86 and modified parity thereafter. This has been accepted by the Govt.

In view of the foregoing no new or different interpretation has been given to the element of NPA and the clarification was issued in consultation with the Department of Expenditure. It may also be mentioned that this does not create two classes of pensioners as the computation formula for pension in respect of doctors immaterial of their date of retirement is the same. All that the OM of 17 Dec. 1998 has mentioned is that where consolidated pension is below 50 % the same may be stepped upto 50 % of the minimum of the revised pay scale.

Given below is an illustrative case of pension revision of a pre-96 case.

Date of superannuation	:	31/1/92
Basic Pay	:	Rs. 6000
NPA	:	Rs. 1000
Total emoluments	:	Rs. 7000
Pension @ 50 % of		

emoluments Rs. 3500
Consolidated Pension : Rs. 8660
(as per formula)

As the consolidated pension is less than 50 % of the minimum of the revised scale of pay (i.e. Rs.18400-22400/-) as on 1-1-96, the consolidated pension of Rs. 8660 will be stepped upto Rs. 9200 per month. If on the other hand if pension is Rs. 3850, then the consolidated pension will be Rs. 9521 and over 50 % of the minimum of the revised scale. In such a case, the OM of 17 Dec. 1998 will not apply. From this it will be seen that by implementing the VCPC's recommendations on paritythere is no loss and the question of recovery does not arise. In the present case of doctors some Ministries like the Ministry of Health has wrongly interpreted our OM and added after stepping up to the minimum of the scale the element of NPA. If this done the pension payable becomes Rs. 11500 instead of Rs. 9200 which will be incorrect as NPA has been taken into account while both calculating and consolidating pension. Also as the pay Commission has recommended only modified parity which has been accepted by the Government. the question of equating the pension of pre 96 and post 96 retirees does not arise.

Rule 70 of CCS (Pension) Rules provides that pension once authorised after final assessment shall not be revised to the disadvantage of the Govt. servant except under provisions of Rules 8 & 9. The Ministry of Health which has wrongly interpreted our OM are now rectifying their error by making some recovery. This definitely cannot be termed as pension being revised to the disadvantage fo the pensioner after final assessment. Recovery from the arrears of pension granted to a pensioner on account of wrong interpretation will not attract Rule 70 of CCS (Pension) Rules.

In view of the above :

1. NPA has been taken into account in respect of all past retirees pre-86, post-86 and in respect of Govt. servants retiring on or after 1-1-96 while computing pension as part of emoluments. So there is no discrimination in this regard.

2. The Ministry of Health had erroneously interpreted the OM of Department of Pensions. NPA according to the OM is not to be added to the minimum of the revised scale of pay as on 1-1-96 while stepping up consolidated pension to 50 % of the minimum of the pay scale.

Departments/Ministries that had wrongly interpreted the OM initiated recovery. However, when the matter came up before the CAT and the CAT stayed the implementation of the clarificatory order of 29-10-99 recovery has been kept in abeyance for further directions from the CAT.

3. The whole process of treating past pensioners as pre-86 or post-86 came up because of the acceptance by the Govt. of the principle of complete parity as on 1-1-86 and modified parity thereafteras made by the Pay Commission. As complete parity was in terms of the IVth Pay Commission's scale i.e. effective from 1-1-86, notional fixation of pay was made in respect of all pre-86 retirees. As post-86 retirees were already on the IVth Pay Commission's scale, no notional fixation was involved and their existing pension only consolidated and was stepped up to 50 % of the minimum of the scale as on 1-1-96 if less than that.

4. In order to operationalise the concept of modified parity the OM of 17 December 1998 was issued. This attempted to bring all past pensioners atleast to 50 % of the minimum of the revised corresponding scale of pay. As NPA is not a part of the scale, it is given only in lieu of private practice, has already been taken into account while computing pension and also contained in the elements of consolidation formula, this element is not to be added to 50 % of the minimum of the pay scale."

21. It would be evident from there that the component of NPA has been taken care of in computing a pension of the retirees before and after the implementation of the 5th Pay Commission's recommendations. It would be seen from the illustration given that at the time of the retirement the individual medical officer that NPA has been taken in to consideration while working out the retirement benefits and he has been granted emoluments subject to 50 % at the relevant time. Keeping in mind the same, the replacement consolidated pension has been worked

out and as the same was still short of 50 % of the minimum of revised scale of the pay, the same has been stepped up to higher amount. It meant, therefore, that the replacement scale which has given the applicants on consolidation also has in it the component of NPA and as such it is not necessary to incorporate it once again. This is totally inconsonance with the adoption of total parity on 1-1-86 and modified parity thereafter. This cannot, therefore, be assailed.

22. In the above context, it is pertinent to go back to the concepts of emoluments for the purpose of computation of pension which in relatable to the period immediately before the retirement of the Govt. Servants for the purpose of pension and at the time of his death for the purpose of family pension. So, it is clear from the definition that the relevant date is the date of superannuation or death and not any subsequent date. Since the component of NPA has once gone into computation of pension at the time/date of the actual retirement of the individuals concerned and the refixation and consolidation of pension following the adoption of the 5th Pay Commission's recommendations has taken place including the above component, there would not be any justification for adding NPA at the revised rate once again. Respondents' argument that the relevance of emoluments for computation of pension is only at that time and on any subsequent daate is correct and merits endorsement.

23. Applicants have attempted to lay stress on the letter No. A-45012/11/97-CHS V dt. 7-4-98, stating that Central Health Service Officers be paid non-practising allowance @ 25 % of their basic pay subject to the condition that pay plus non practising allowance did not exceed Rs. 29,500/- p.m. The letter also indicates that non-practising allowance shall also count as 'pay' for service benefits including retirement benefits as hitherto. This clarification does not come to the help of the application, as it relates to those who retire now and not to those who have retired earlier. The expression 'hitherto' only means that the practice of including NPA while computing pensionary benefits, as earlier, continues, but it does not follow that the revised NPA becomes available again to all those who have retired earlier and had got their pensionary benefits including NPA, at the time of their retirement.

24. The applicants have pleaded that the non-inclusion of the above revised rates of NPA has placed them at a disadvantage vis-a-vis the post-96 retirees who have been given the benefit of inclusion of NPA at the revised rate. This is not correct and there is no descrimination as the post-96 retirees are being granted the benefit of inclusion of NPA with reference to their date of retirement while in the case of the applicants their pension had been fixed including the component of NPA which was relevant at the time of their respective retirements and the revised consolidated pension has been worked out with reference to that amount. They have, therefore,

neither lost any benefit by the present arrangement nor has any prejudice or hostile descrimination been caused to them.

25. The second plea raised by the respondents is that the inclusion of the NPA for employees who have retired earlier is not warranted, as having gone out of the CGHS and Govt. service, they were not bound by any direction nor to practice. This is not relevant. Pension being an annuity being paid by the Government as a recognition or reward or recompense for the the services rendered by the Govt. servants at the prime of their life, the fact that on retirement, they take any employment or engages themselves in any other occupation should not come in the way of their getting the normal pension. It is possible that quite a few of retired Govt. doctors would be taking up private practice or consultancy after superannuation. In fact it is something good for the society where qualified doctors are in short supply. At the same time, there may be a few doctors who had worked on non - clinical subjects like Bacteriology, Preventive Medicine, Epidemiology etc. who cannot, by the very nature of their specialisation take up any private practice even after retirement. Therefore, that on retirement, private practice is not prohibited cannot and should not be a ground for not including that component while computing pension. However, all the applicants before us have got the component of NPA duly included in emoluments at the time of their superannuation and the pensionary benefits so worked out have been consolidated and even stepped up following the adoption of the

recommendations of the 5th Pay Commission. No case, therefore, can be made out for inclusion of the same once again, in law.

26. The only inference that can emerge is that the element of NPA having been included once while calculating the pemsion of the applicants, there is no case for its inclusion once again. The applicant's plea, therefore, has to fail.

27. In view of the above the decision of the Government for not exceeding the request of the applicants for including the NPA while computing the revised pension once again, is correct and cannot be assail. In the case one or two applicants before us, it is seen that the pension has been revised including the component of NPA at the new rates once again after consolidating, this was incorrect and the Government has taken steps to recover the same corrrectly. The same cannot be faulted. In this case our attention is also drawn to Rule 70 of the CCS (Pension) Rules 1972 which reads as under :-

REVISION OF PENSION AFTER AUTHORISATION

(1) Subject to the provisions of Rules 8 & 9 pension once authorised after final assessment shall not be revised to the disadvantage of the Government servant,

unless such revision becomes necessary on account of detection of a clerical error subsequently :

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorisation of pension.

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.

2 The plea raised is that the downward revision in pension, after it has been once finalised, is permitted only in cases of clerical error noticed

and that too can be permitted only after service of a notice on the affected party. However, Rule 70 is subject to Rules 8 & 9 dealing with future good conduct of the retired official and President's right to withhold or forfeit pension. Respondents are correct when they state that in the present situation Rule 70 is inapplicable. In the instant cases certain ministeries have wrongly interpreted the instructions of the Deptt. of Pensions & Pensioner's Welfare and included the element of NPA once again while granting pensionary benefits. This mistake has resulted in excess payment in one or two cases leading to action for recovery of payment made in excess. This, therefore, is not a case for adopting Rule 70. Still adherence to principles of natural jlustisce would require that any decision being taken to the disadvantage of any Govt. servant, that too with retrospective effect could have been done only after putting the concerned individual on notice. Seen from this angle the order of recovery of excess amount paid, directed in the case of the applicant in OA No. 914/2000 is liable to be quashed. The same, however, would be immaterial as far as the final decision is concerned, as we are holding now that the inclusion of NPA relatable to the revised scale is not permissible in the case of the applicants.

29. The applicants have raised before us the decision of the Constitution Bench of the Supreme Court given on 17-12-1982 in D.S.Nakara & Ors. Vs. Union of India 1983 (2) SCR P.165. Wherein it has been held that dividing pensioners so as to confer benefits on some while denying it to other, resulted

in creating an arbitrary classification devoid of any rational nexus and was violative of Art 14. This decision can not be relied upon by the applicants as no discrimination has been cost between them and the post 1996 retirees as in both cases the computation of pensionary benefits included the element of NPA which was relevant at the time/date of the retirement. In fact in the case of the applicants the amount worked out including NPA has been consolidated & stepped up. The decision of the Hon'ble Supreme Court in case of the Chairman Railway Board & Others Vs. C.R. Rangadhamaiah and Others JT 1997 (7) P.180 also could not help the applicnt as this is not a case of reducing the amount of pnsion that had become payable to the employees by any subsequent notification, but was only one of correcting a mistake which arose in the interpretation of Government instructions by the Ministry of Health. The same is the position with reference to a few of the other decisions raised by the applicants. They are, therefore, not being specifically referred to.

30. In the above view of the matter the applications, to our mind, do not have any merits and the applicants have not made anyt case for our intervention. They are, therefore, dismissed , but in the circumstances of the case with no order on cost. Interim reliefs granted if any are also set aside.

(Govindan S.Tampi)
Member (A)

(V.Rajagopala Reddy)
Vice-Chairman (J)

/vikas/

Original judgement is placed in OA 621/2000.

Attested

b.Ce. Srinivasan
11/12/2000

C.O. (CD)