

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.992/2000

WITH

OA NOS.1604/2000, 1647/2000, 1916/2000 & 2259/2000

New Delhi, this the 05th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

1. Dr. K.C. Garg, S/o Late Shri R.S. Garg,
R/o A-14/1, Vasant Vihar,
New Delhi - 110 057
2. Dr. D.D.S. Kulpati, R/o P-85, South Extn
Part-II, New Delhi
3. Dr. G.G. Mansharamani, R/o P-25,
West Patel Nagar, New Delhi - 110008
4. Dr. (Mrs) Saroj K. Prakash,
W/o Shri Gyan Prakash,
R/o 70, Aakriti Apartments,
Patparganj, Delhi-92
5. Dr. R.C. Misra, S/o Late Shri C.S. Misra,
R/o C-42, Nizamuddin East, New Delhi
6. Dr. P.D. Gulati, S/o Late Sh. C.R. Gulati,
R/o A-16, Swashthya Vihar, Delhi-92
7. Dr. P.S. Gupta, S/o Late Shri B.M. Gupta,
R/o 181, Madhuban, Delhi - 92
8. Dr. Ghanshyam Dass Gupta,
S/o Late Shri B.D. Gupta,
R/o A-136, Madhuban, Delhi-92
9. Dr. S.K. Nair, S/o Late Shri Raj Krishan Nair,
R/o A-48, Hauz Khas, New Delhi 16
10. Dr. K.S. Mehdiratta,
S/o Shri M.S. Mehdiratta,
7, Madhuban, Delhi - 92
11. Dr. R.N. Singhal, S/o Sh. J.N. Singhal,
R/o B-362 Mayur Vihar, Phase-II,
Delhi - 92
12. Dr. R.N. Mittal,
Resident of
New Delhi
13. Dr. R.C. Aranya,
S/o Late Shri Suraj Bhan Aranya,
R/o B-37, Madhuban, Delhi - 92
14. Dr. S.N. Budhiraja,
S/o Dr. Surendra Natth,
R/o A-2/33, Azad Apartments,
Aurbindo Marg, New Delhi-16

15. Dr. Anand Prakash,
R/o C-142, Sector-9, Noida (UP)

16. Dr. B.D. Dwivedi,
S/o Late Pt. Ganga Dhar,
R/o E-103, Sheikh Sarai,
Greater Kailash-III, New Delhi

17. Dr. B.M.S. Bedi,
S/o Shri Dhani Ram Bedi,
R/o A-97 Madhuban,
Delhi - 100 092

18. Dr. Rattan Singh,
S/o Late Shri Gurmukh Singhji,
R/o A-2, Swasthya Vihar,
Delhi - 110 092

19. Dr. D.S. Aggarwal,
S/o Late Shri C.L. Aggarwal,
R/o B-24 Swashthya Vihar,
Delhi - 110 092

20. Dr. R. Natarajan,
R/o A-328, Shivalik Enclave,
Malviya Nagar, New Delhi

21. Dr. Prem Kakkar,
Resident of
New Delhi

22. Dr. K.L. Sawhney,
S/o Late Shri Bhagat Ram,
R/o B-113, Swasthya Vihar,
Delhi - 110 092

23. Dr. (Mrs) P. Chadha,
Resident of
New Delhi

24. Dr. N.C. Gupta,
S/o Shri Devi Lal Gupta,
R/o 65 Sadar Apartments,
Mayur Vihar Phase-I,
Delhi - 110 092

25. Dr. B. Bhattacharjee,
S/o Late Shri R. Bhattacharjee,
R/o 93, Doctors' Apartment,
Vasundhara Enclave, Delhi-96

26. Dr. (Mrs) Lata Saini,
W/o Shri Gurdip Singh,
R/o Sector 37, House No. 152,
Noida (U.P.)

27. Dr. (Miss) Satya Gupta,
D/o L. Jagan Nath Singh,
R/o B-100, Swashtya Vihar,
Delhi-110 092

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28. Dr. R.K. Puri, S/o Shri M.L. Puri,
R/o I-1720, Chitranjan Park,
New Delhi
29. Dr. Bishnu Kumar, S/o Late Sh. Kamla Prasad,
R/o G-152, Sector 41, Noida,
Ghaziabad Nagar (U.P.)
30. Dr. (Mrs) Kamla Chandra,
W/o Col. Jagdish Chandra,
R/o R-402, Anupam Apartments,
East Arjun Nagar, Delhi - 32
31. Dr. H.P. Varma,
S/o Late Shri R.P. Varma,
R/o A-603, Tower Apartments,
Swasthya Vihar, Delhi - 92
32. Dr. K.B. Sharma,
Resident of
New Delhi
33. Dr. M.S. Siddiqui,
S/o Shri Mohammad Shafi,
R/o B-23, Swasthya Vihar, Delhi-92
34. Dr. S.K. Lal,
S/o Late Shri Kundan Lal,
R/o New Delhi
35. Dr. K.K. Aggarwal,
S/o Shri Ram Kumar Aggarwal,
R/o IV/27, M.I.G.(SFS), Vaishali,
Ghaziabad - 201010 (UP)
36. Dr. H.K. Chuttani,
Resident of
New Delhi
37. Dr. M.P. Gupta,
S/o Late Shri Kundan Lal,
R/o 198, Gagan Vihar, Delhi-51
38. Dr. P.V. Gulati,
S/o Late Shri C.L. Gulati,
R/o A-72, Swasthya Vihar,
Delhi - 110 092
39. Dr. J.N. Ghose,
S/o Late Shri M.N. Ghose,
R/o J-1904, Chitranjan Park,
New Delhi - 109 019
40. Dr. R.C. Jindal,
S/o Shri K.P. Gupta,
R/o A-10, Swasthya Vihar,
Delhi - 110 092
41. Dr. Dharam Pal,
Resident of
New Delhi

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42. Dr. (Ms.) Tripata Dutte,
Resident of
New Delhi

43. Dr. (Mrs) Shalini Aggarwal,
Resident of
New Delhi

44. Dr. KJ.P. Mathur,
R/o 77, Chitra Vihar,
Delhi 110 092

45. Dr. P.N. Sehgal,
S/o Late Shri S.N. Sehgal,
R/o A-103, Swasthya Vihar,
Delhi -110 092

46. Dr. Sharad Kumar,
R/o 9/7-B, Surodaya Colony,
Rana Pratap Marg,
Lucknow - 226 001 (UP)

47. Dr. (Mrs) Sudarshan Kumari,
W/o Dr. Surender Kumar,
R/o 14/466, Sunder Vihar, New Delhi-87

48. Dr. Arun Goel,
R/o B-114, Swasthya Vihar,
Delhi - 110 092

49. Dr. O.P. Bhatnagar,
R/o 7, Godavani Apartments, Alkanada,
New Delhi - 19 Applicants
(By Advocate : Shri G.D. Gupta)

Versus

1. Union of India through the
Secretary to the Government of India,
Ministry of Personnel, Public Grievances
& Pensions,
Department of Pensions & Pensioners Welfare,
Lok Nayak Bhawan, Khan Market,
New Delhi - 110 003

2. The Secretary to the Government of India,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi - 11

3. The Secretary to the Government of India,
Ministry of Health & Family Welfare,
Department of Health,
Nirman Bhawan, New Delhi - 11

4. The Pay & Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance,
Government of India,
Trikoot - II (Behind Hotel Hyaat Regency),
Bhikaji Cama Place,
New Delhi-110 066 Respondents
(By Advocate : Shri V.S.R. Krishna)

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OA NO. 1604/2000

Dr. Kshitish Chandra Das
 Aged about 74 years, Son of
 Late Dr. A.K. Das,
 R/o D-605, Anandlok CGHS Ltd.,
 Mayur Vihar Phase-1,
 New Delhi -110019
 (By Advocate : Shri M.K. Gupta) Applicant

Versus

1. Union of India, Ministry of Health & Family Welfare, Deptt. of Health, Nirman Bhavan, New Delhi-110 011 Through its Secretary
2. Union of India, Ministry of Personnel Public Grievances & Pensions, Department of Pension & Pensioners Welfare, Lok Nayak Bhavan, Khan Market, New Delhi-110 003 Through its Secretary
3. Union of India, Ministry of Finance, Deptt. of Expenditure, New Delhi: 110 001 Through its Secretary Respondents
 (By Advocate : Shri V.S.R. Krishna)

OA NO. 1647/2000

1. Dr. S.M. Govil,
 Hon. Secretary,
 N-303, Anupam Apartment,
 East Arjun Nagar, Delhi-32
2. Dr. P.N. Banerjee, D-2, Anand Vihar,
 Delhi
3. Dr. B.N. Sinha, R-205, Anupam Apartment,
 East Arjun Nagar, Delhi-32
4. Dr. Satyendra Singh
 B-128, Anand Vihar,
 Delhi-110092
5. A.P. Tandon, D-160, Anand Vihar,
 Delhi - 110 092 Applicants
 (By Advocate : Shri B.S. Maine)

Versus

1. The Secretary,
 Ministry of Finance,
 Department of Expenditure, Neww Delhi
2. The Secretary,
 Ministry of Personnel Public Grievances,
 and Pension, Deptt. of Pension and
 Pensioners Welfare,
 Lok Nayak Bhawan, New Delhi

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3. The Secretary,
 Railway Board,
 Ministry of Railway, Rail Bhawan,
 New Delhi Respondents
 (By Advocate : Shri V.S.R. Krishna)

OA NO. 1916/2000

Shri (Dr.) S.K. Sinha,
 Son of Shri
 R/o H-34, Indraprastha Apartments,
 114, I.P. Extension, Patparganj,
 Delhi - 110 092 Applicant
 (By Advocate : ~~Mr.~~ ^{Ms.} Nirmal Oberoi)

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,
 Department of Health,
 Nirman Bhawan, New Delhi
 through its Secretary

3. Union of India,
 Ministry of Personnel/Public
 Grievances & Pensions,
 Department of Pension and
 Pensioners Welfare,
 Lok Nayak Bhawan, Khan Market,
 New Delhi - 110 003
 through its Secretary

4. Union of India
 Ministry of Finance,
 Deptt. of Expenditure,
 New Delhi-110 001
 through its Secretary Respondents
 (By Advocate : Shri K.C.D. Gangwani)

OA NO. 2259/2000

Dr (Mrs) Saral Vaze aged about 76 yrs
 W/o Hon'ble Mr. Justice V.V. Vaze (Retired),
 R/o C-504, Kaveri Apartments, Alaknanda,
 Kalkaji,
 New Delhi - 110 019 Applicant
 (By Advocate : Shri S.K. Ray)

Versus

1. Govt. of N.C.T. of Delhi
 54 Shamnath Marg, New Delhi 110054
 Through its Secretary (Medical)

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2. Union of India, Ministry of Health & Family Welfare, Deptt. of Health, Nirman Bhavan, New Delhi-110 011 Through its Secretary
3. Union of India, Ministry of Personnel Public Grievances and Pensions, Deptt. of Pension and Pensioners Welfare, Lok Nayak Bhawan, Khan Market, New Delhi-110003 Through its Secretary
4. Union of India, Ministry of Finance, Deptt. of Expenditure New Delhi : 110 001 Through its Secretary
5. The Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Deptt. of Expenditure, Govt. of India, Trikoot-II (Behind Hotel Hyatt, Regency), Bhikaji Cama Place, New Delhi-66
6. The Manager, Syndicate Bank, Nehru Place Branch, Shakuntala Building Nehru Place New Delhi
7. The Pay and Accounts Officer-XV (Hosp.) Govt. of NCT of Delhi, IIIrd Floor, MBD Building, LNJP Hospital, New Delhi-2 Respondents

(By Advocate : Shri V.S.R. Krishna for R-2 to R-6
 Shri Ram Kanwar for R-1 & R-7)

O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

All these six OAs involve common issues of law and fact and have been filed by retired medical practitioners who were in the employ of the Central Government. The same Office Memorandum (OM) dated 29th October, 1999 by which their pensions have been refixed/reduced has been impugned in these OAs. We are, therefore, taking these up together for consideration and for passing this common order.

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2. We will, to begin with, briefly recapitulate the basic facts relating to each of these OAs in the following paragraphs.

3(i). OA No. 992/2000, being treated as the lead case in this order, has been filed by 49 medical doctors who have all retired on superannuation after 1st January, 1986 but before 1.1.1996.

3(ii). OA No. 1604/2000 has been filed by only one applicant who retired on 30.11.1984, i.e. even before the enforcement of the 4th Central Pay Commission's recommendations.

3(iii). OA No. 1647/2000 has been filed by four Medical Doctors and the Association of Retired Railway Medical Officers through one Dr. S.M. Govil. The aforesaid Association has 63 members, some of whom have retired in the pre-1st January, 1986 period while the others thereafter in the pre-1st January, 1996 period.

3(iv). OA No. 1916/2000 has been filed by only one medical doctor who retired in the pre-1st January, 1996 period, though after 1986.

3(v). OA No. 2259/2000 has also been filed by only one applicant who retired in the pre-1st January, 1986 period.

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The applicants in the aforementioned various OAs are aggrieved by the fact that due to the clarification rendered by means of the impugned OM dated 29th October, 1999, the respondents have decided not to take into account the Non-Practising Allowance (NPA) calculated @ 25% of the revised scale of pay for the purpose of determining their pension in the post-1st January 1996 scenario. According to them, NPA being integral part of the pay, the respondents should not have taken the aforesaid decision which is illegal and deserves to be quashed. The aforesaid OM has resulted in the reduction of their pension. The representations wherever filed by them have been rejected in terms of the clarificatory provisions of the aforesaid OM dated 29.10.1999.

4. We have heard the learned counsel representing the parties in the various OAs at length and have also perused the material placed on record.

5. Since the pleadings placed on record in the various OAs and the arguments and pleas advanced by the learned counsel on either side did not, in our view, bring out the facts and circumstances in terms clear enough, this case was listed for being spoken to on 25.9.2001. On this occasion, the learned counsel on either side were directed to include the following information also in the written submissions which they wished to file by 1.10.2001.

(a) Copy of letter dated 20.3.1998 referred to

in the Ministry of Health and Family Welfare letter dated 7.4.1998 (Annexure A-5).

(b) Various rules and regulations included in the CCS (Pension) Rules, 1972 and the Fundamental Rules relied upon together with a clear statement about the manner in which any of the aforesaid rules or regulations might have been amended by the respondents. The availability of this information is considered necessary in view of the averments made by the learned counsel that some of the aforesaid rules have actually been amended by the respondents

(c) A clear statement depicting the manner in which the pension of pre-1986 and pre-1996 retirees was initially fixed together with a separate statement showing the manner in which the pension has been fixed in the wake of the DOP&PW's OM dated 29.10.1999. For preparing the aforesaid statements, the live example of one of the applicants will be taken respectively both for pre-1986 and pre-1996 retirees. Various elements/components of pension will be individually and separately shown in each of the statements. Copies of the order passed by the respondents fixing the

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pension in respect of the very same applicants initially and upon revision will also be provided.

The learned counsel on either side have filed their written submissions along with some, not all, information though without necessarily rendering the picture clearer than before in certain respects.

6. During the course of arguments, the learned counsel for the applicants in these various OAs have placed heavy reliance on the ratio of the judgement rendered by the Supreme Court in Union of India and Ors. vs. Dr. Vijayapurapu Subbayamma decided on 22.9.2000 and reported in JT 2000 (Suppl.1) SC 41. For the sake of convenience therefore, we reproduce, in the following, what has been held by the Supreme Court in the aforesaid case.

"The conspectus of legal position that emerges are these:

(a) Where an employee under the terms and conditions of service or under the relevant Rules relating to pension is not eligible to earn pension on his or her retirement, any amendment to the Rules covering a new class of pensioners would not confer pensionary benefits to the employee who has retired prior to coming into force of such amendment of Rules.

(b) However, the position would be different if such an amendment in the relevant pension Rules is with retrospective effect as to cover a new class of employees including those employees who, at the relevant time, were not entitled to earn pension under the then existing Rules or conditions of service.

(c) Where an employee at the time of retirement is entitled to pension under

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the relevant Rules, any subsequent amendment to the relevant Rules enhancing pension or conferring additional benefit would be also applicable to him." (emphasis supplied)

7. We have noted that the applicants in these various OAs were happy and satisfied with the determination of the amounts of their pension until the DOP&PW decided to issue a clarificatory OM on 29th October, 1999 (Annexure A-1). It is precisely this OM which has given rise to a good number of OAs filed in this Tribunal. Earlier as many as six OAs, being OA Nos. 621/2000, 624/2000, 625/2000, 626/200, 914/2000 and 970/2000, were filed in this Tribunal challenging the aforesaid OM of 29th October, 1999. The said OAs were taken up together and a common order was passed in respect of them on 5th December, 2000. The aforesaid OAs were dismissed by the Tribunal. The aforesaid order of dismissal was sought to be reviewed through six RAs filed, by and large, by the same applicants. The said Review Applications were also rejected by this Tribunal's order dated 19th March, 2001. The learned counsel appearing on behalf of the applicants have taken us through the length and breadth of the orders passed by the Tribunal in the aforesaid OAs and RAs in an attempt to find fault with the same on various grounds.

8. The applicants in the various OAs under consideration in this order have, in their pleadings placed on record as well as during the course of arguments, relied on various Office Memorandums/letters issued by the various respondents. Since the provisions contained in these have formed the basis of arguments,

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often vehemently expressed, we find it useful to indicate, howsoever briefly, the contents of each alongside, in the following.

- I. Ministry of Health & Family Welfare (MOHFW for short) letter dated 22.9.1987 (Annexure A-2 colly.) lays down the rates of NPA by following the slab system and provides that the NPA will be treated as 'Pay' for all service matters including for the calculation of retirement benefits (emphasis supplied).
- II. MOHFW letter dated 2.11.1989 (Annexure A-2 colly.) lays down a revised slab system of NPA and reiterates that the NPA will be treated as pay for all service matters. (emphasis supplied)
- III. Para 52.16 of the recommendations made by the 5th Central Pay Commission (CPC) regarding NPA which, inter alia, provides that NPA will continue to count towards all service and pensionary benefits as at present. (emphasis supplied)
- IV. Para 137.14 of the recommendations of the 5th CPC deals with the grant of pension to pre-1986 retirees. The specific recommendations contained herein is 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. The further provision made is that the consolidated pension as on 1.1.1996 shall not be less than 50% of the minimum pay of the post, as revised by 5th CPC, held by the pensioner at the time of retirement. (emphasis supplied)
- V. Para 137.15 of the 5th CPC's recommendations provides that the consolidated pension as on 1.1.1996 shall be not less than 50% of the minimum pay, as revised by the 5th CPC, of the post held by the pensioner at the time of retirement and the same may be stepped up where necessary to the level of 50% of the minimum pay of the post held by the petitioner at the time of retirement. (emphasis supplied)

9. The provision extracted above led to the issuance of the OM dated 27.10.1997 (Annexure A-4) which is the basic document laying down various parameters for

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consolidation of pension in the light of the recommendations made by the 5th CPC and to the extent accepted by the Government. The various provisions made in this particular OM were discussed at length during the course of arguments in this case. Before we refer to it in some detail, we will, in what follows, briefly describe the salient provisions made in several other OM/letters on which a good deal of reliance has been placed by the parties.

10(a). OM dated 10.2.1998 has been issued by the DOP&PW on the subject of implementation of Govt's decision on 5th CPC's recommendations regarding revision of pension of pre-1986 retirees. This OM takes into account essentially the aforesaid OM dated 27.10.1997. The specific provisions in this OM (dated 10.2.1998) are the following. These flow from the acceptance of the recommendations made in para 137.14 of 5th CPC's report reproduced in para 8 above.

"The notional pay so arrived at 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&W(A) Part-II dated 27th October, 1997 and shall be treated as basic pension for the purpose of grant of Dearness Relief in future." (emphasis supplied)

10(b). MOHFW letter dated 7.4.1998 (Annexure A-5) which lays down the revised ratio (as per 5th CPC recommendations) of NPA of 25% of the basic pay subject to the condition that pay plus NPA will not exceed

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Rs.29,500/- p.m. The same reiterates that NPA shall count as "pay" for all service benefits including retirement benefits. We would like to observe here that the learned counsel for the applicants have drawn considerable inspiration from this letter during the course of arguments, though, in the event, the same has been found by us to be misplaced. Payment of NPA @ 25% will be applied as we shall see later in this order only to those who have served in the post-1st January, 1996 period.

10(c). OM dated 17.12.1998 issued by the DOP&PW by which certain provisions contained in the aforesaid OMs dated 27.10.1997 and 10.2.1998 have been modified, and which has been issued after re-consideration of the decisions already taken by the Government on the 5th CPC's recommendations, mentions, in its opening paragraph, that w.e.f. 1.1.1996 the pension of 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. 1.1.1996) of the post last held by the pensioners. It is this provision which has been relied upon most intensively by the learned counsel for the various applicants in order to argue that the only way to determine the pension of a pre-1996 retiree is first to determine the pay by adding the minimum of the pay scale (as revised by the 5th CPC) for the post held by the pensioner at the time of retirement to the NPA calculated @ 25% (this percentage recommended by the 5th CPC) of the said minimum, and thereafter to divide the amount so arrived at by two.

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The further argument advanced is that if the amount of pension thus arrived at is found to be less than the amount of pension arrived at by following the formula laid down in paragraph 4.1 of the aforesaid OM dated 27.10.1997, the higher of the two amounts will prevail and will be regarded as the amount of pension payable to the retiree.

10(d). DOP&PW's OM dated 19.3.1999 contains clarifications on certain points raised in respect of the revision of pension of pre-1986 retirees. Insofar as it is relevant for our purpose, this OM clarifies that in accordance with Rule 33 of the CCS (Pension) Rules, 1972, w.e.f. 1.1.1986, the expression 'emoluments' would mean basic pay as defined in FR 9 (21) (a) (i) which a Government servant is found to be receiving immediately before his retirement and also includes NPA granted to Medical Officers. These provisions made herein have not been disputed, for their correctness, although a feeble attempt was made during the course of arguments, to link up the aforesaid clarification with the plea taken in sub-para 10(c) above.

11. Having considered in some detail the various recommendations, OMs and letters relied upon by the parties in the preceding paragraphs, and having regard to the fact that the matter under consideration would, in any case, require to be considered and decided ultimately in the light of the various rules and regulations, we find it necessary to recapitulate, even

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though briefly, the provisions made in the relevant rules and regulations in the following paragraphs. Later we will find out for ourselves if any of the relevant rules and regulations have been amended and if so, in what manner and to what extent, and to what effect.

12(a). Rule 49 of the CCS (Pension) Rules, 1972 provides for the amount of pension. Sub-rule (2)(a) of the aforesaid rule provides that after completing qualifying service of not less than 33 years the amount of pension shall be calculated at 50% of average emoluments. This provision takes effect from 1.1.1986. The terms 'average emoluments' is defined in Rule 34 of the aforesaid CCS (Pension) Rules, 1972. According to this Rule, average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last 10 months of his service. The term 'emoluments' is defined in rule 33 of the aforesaid Rules. The same provides as under:

"The expression 'emolument' means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement..... and will also include Non-Practicing Allowance granted to Medical Officers in lieu of private practice". (emphasis supplied)

The aforesaid definition has also taken effect from 1.1.1986. Thus, in short, according to the rule position, emoluments include NPA and pension is required to be calculated at 50% of the average emoluments to be

determined with reference to the emoluments drawn during the last 10 months of service.

12(b). F.R. 9 (21) (a) defines 'pay' as the amount drawn monthly by a government servant as -

- (i) the pay, other than ; and
- (ii) overseas pay, ; and
- (iii) any other emoluments which may be specially classed as pay by the President. (emphasis supplied)

The aforesaid F.R.9 (21) (a) does not seem to have been amended to provide for inclusion or exclusion of NPA in the definition of 'pay' in any manner. Thus, it will be futile to argue that NPA constitutes any part of pay or is included in the definition of pay. We have seen that the term "emoluments" has been defined as including basic pay and NPA. It has to be noted here that the NPA has been set apart from the basic pay. The same cannot, therefore, be treated as part of basic pay either. NPA will thus remain only a part of the emoluments paid to an employee.

13. In the various OMs to which a reference has been made in the preceding paragraphs upto paragraph 10, expressions such as "NPA will be treated as pay for all service matters" or "NPA will count towards payment of all service benefits" have been used. In view of the rule position brought out in para 12 above, it is not possible successfully to argue that the aforesaid expressions used in the aforesaid OMs amount to saying that NPA is a part of pay/basic pay or is included in

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the definition of pay/basic pay. Pay and basic pay are terms used in the aforesaid rules with sufficient clarity and, therefore, we do not accept the plea advanced by the learned counsel appearing on behalf of the various applicants that NPA is an integral part of pay/basic pay and, therefore, while determining the pension payable to pre-1996 retirees NPA @ 25% must necessarily be added to the minimum of the revised pay scale. There is no other basis for doing so. The aforesaid OM's issued by the respondents particularly those issued by the DOP&PW do not, in our view, purport to lay down any such an arrangement for determining the pension of pre-1996 retirees. By the same token, the pre-1986 retirees will also not benefit by any such arrangement, whereunder NPA @ 25% will need to be added as above for determining the threshold minimum of the pension due to a pre-1996 retiree.

14. The learned counsel appearing on behalf of the respondents has vehemently argued, and we find considerable force in what they have had to say, that a retired Government official, whether a medical doctor or not, is to be treated only as a pensioner and not in any other way. According to them, the OM dated 27.10.1997 as modified by OM dated 10.2.1998 (in respect of pre-1986 retirees) and the OM dated 17.12.1998 in respect of all pre-1996 retirees, hold the field insofar as payment of pension to Medical Doctors and others is concerned. The aforesaid OM dated 27.10.1997 lays down a clear formula in paragraph 4.1 thereof in the following terms:

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"The pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated with effect from 1.1.1996 by 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 O.M. No.42/8/96-P&PW (G) dated 20.3.1996.
- iii) Interim Relief I.
- iv) Interim Relief II.
- v) Fitment weightage @ 40% of the existing pension/family pension."

15. After the aforesaid provision, the following addition has been made, by way of modification, by the O.M. dated 17.12.1998:

"However, in cases where the pension consolidated is treated as the final full pension, it shall not be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January 1996 for the post last held by the pensioner at the time of his retirement."

16. Yet another modification has been made by the same OM dated 17.12.1998 by making the following provision in place of the sentence "where the consolidated pension/family pension in terms of paragraph 4 above works out to an amount less than Rs.1,275/- the same shall be stepped upto Rs.1275/-" figuring in para-5 thereof.

Modification :

"Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs.1,275 per month and a maximum of upto 50% of the highest pay applicable in the Central Government, which is Rs.30,000 per month since 1st January, 1996, but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay

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introduced with effect from 1st January, 1996 for the post last held by the employee at the time of his retirement....."
(emphasis supplied)

17. From the aforesaid modifications made in respect of all the pre-1996 retirees already summarised in paras 8 and 10 above, it is clear that pension due to those who retired before 1.1.1996 will first need to be consolidated by applying the formula reproduced in paragraph 14 above. The sum thus arrived at will thereafter be hiked to the level of 50% of the minimum of the revised pay scale for the post held by the pensioner at the time of his retirement. In a case where the consolidated pension arrived at by the application of the aforesaid formula already exceeds the limit of 50% of the minimum of the revised pay scale, the higher amount will be allowed to prevail and will constitute pension due to a pre-1st January, 1996 retiree. We have not discovered any manner of doubt in regard to the aforesaid position despite the various arguments advanced by the learned counsel for the applicants.

18. Insofar as the pre-1st January, 1986 retirees are concerned, the relevant provisions and the modifications thereto made have already been reproduced in paragraphs 8, 9 and 10(a) above. Here again, we do not see any problem inasmuch as the learned counsel appearing on their behalf have advanced the same pleas in respect of them as have been advanced on behalf of the pre-1st January, 1996 retirees by impugning the very same OM dated 29.10.1999.

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19. The learned counsel appearing on behalf of the applicants have also submitted that the manner of determination of pension sought to be laid down as a result of the clarification issued by the DOP&PW vide their O.M. dated 29.10.1999 is bound to lead to hostile discrimination between the pre and post-1st January 1996 retirees insofar as the inclusion of the element/component of NPA is concerned. We find no force in this argument either. The respondents have placed on record a statement showing the fixation of pay under CCS (Revised Pay) Rules, 1986 (R-1). We find therefrom that in arriving at the amount of existing emoluments as on 1st January, 1986, in addition to basic pay, NPA has been taken into account in various ways. For example, NPA has been taken into account in calculating the amounts of interim relief as also for computing DA, ADA etc. Further, even the revised emoluments as on 1.1.1986 have been worked out by taking into account (by adding) the revised NPA. Thus, at the stage of fixation of revised emoluments under the CCS (Revised Pay) Rules, 1986, as on 1.1.1986 revised NPA as admissible then has been fully taken into account. Thus the component of NPA has been taken into account at the stage of fixation of existing emoluments as well for computing revised emoluments as on 1.1.1986. In the circumstances, it is clear to us that the amount of pension paid to pre-1996 retirees contains and includes full element of NPA admissible at the relevant time. Providing for the same once again in the post-1st January 1996 period and that too at the enhanced rate of 25% of basic pay (minimum of the revised scale of pay) will evidently and fairly

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unambiguously lead to the inclusion of the component of the NPA more than once in the calculations made for determining pension. This cannot be permitted and accordingly we do not find any fault with the clarification rendered by the respondents vide their O.M. dated 29.10.1999. NPA at the revised rate of 25% will be admissible only in respect of those who were or are in service on and after 1.1.1996 and retire from service thereafter. No case of hostile discrimination is thus made out.

20. We have already seen that a certain statement made in the opening paragraph of the O.M. dated 17.12.1998 (referred to in paragraph 10(c) above) has been made use of by the learned counsel appearing on behalf of the applicants to stress that irrespective of the date of retirement, the pensioners are entitled to receive pension which will not be less than 50% of the minimum pay in the revised scale of pay, and NPA, being an integral part of the pay, the amount of pension will have to be determined by adding together the minimum of the revised pay scale and the NPA at the revised rate of 25% thereof and dividing the result by 2. We do not agree with the applicants in this regard. The true import of the modifications sought to be made by the respondents is to be ascertained, in our view, by reading down the aforesaid OM dated 17.12.1998 instead of limiting our consideration to the aforesaid opening paragraph of the aforesaid O.M. Reading down of the aforesaid O.M. dated 17.12.1998 clearly reveals the actual intention of the respondents and the same, as

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already brought out in paragraphs 15 and 16 above, is that in whichever case the amount of pension determined in accordance with the O.M. dated 27.10.1997 (paragraph 4.1 thereof) is found to be less than 50% of the minimum of the revised pay scale (in respect of the post held by the pensioner at the time of his retirement), the same will be hiked to the level of the aforesaid minimum. At the same time, in a case in which the pension determined in accordance with the aforesaid O.M. dated 27.10.1997 is found to be in excess of the minimum of the revised pay scale, the higher amount will be allowed to prevail. This, according to us, is the true import of the provisions of O.M. dated 27.10.1997 as modified by the OM dated 10.2.1998 and 17.12.1998.

21. We will now see whether the respondents have, by issuing various Office Memorandums/letters already discussed in the preceding paragraphs, modified/altered any of the rules and regulations in force in regard to pension. The term "average emoluments" defined in Rule 34 and referred to in paragraphs 12(a) has, we find, been redefined by OM dated 10.2.1998 by which it has been laid down that the pay notionally fixed as on 1.1.1986 will constitute average emoluments. Similarly, by providing in the OM dated 17.12.1999 that the amount of pension worked out in accordance with the OM dated 27.10.1997 (paragraph 4.1 thereof) will be hiked to the minimum of the revised pay scale, the definition of the term "pension" too has been modified. To this extent, we are prepared to agree that the respondents have affected modifications in the

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relevant rules concerning the definition of Emoluments, Average Emoluments and Pension. Amendments have also been made, we find, to the CCS (Pension) Rules, 1972 by providing that the maximum amount of pension can be more than Rs.4,500/- and by prescribing Rs.1,275/- per month as the minimum amount of pension. Barring the aforesaid changes, no other alterations have been made in the relevant rules and regulations. The revised formula for computation of NPA @ 25% has been introduced exclusively in terms of the recommendations of the 5th CPC by issuing a Government order. No rule has been amended for the purpose. The aforesaid changes are evidently intended to benefit the pre-1996 retirees, except that the post-1996 retirees will also benefit by the upward revision in the minimum and the maximum amount of pension. No rule or regulation has been amended, in our judgement, which would benefit the post-1996 retirees exclusively. Such retirees (post-1996) will, of course, benefit from the revised pay scales introduced w.e.f. 1.1.1996 and in the case of medical doctors also from the revised rate of NPA of 25% introduced from the same date. To provide for the revised rate of 25% of NPA, no rule is required to be changed nor has any rule been changed for the purpose. Respondents' letter dated 7.4.1998, repeatedly referred to by the learned counsel appearing on behalf of the applicants, deals with only those who were in service as on 1.1.1996 and have retired thereafter. The same would apply at the same time to those also who are in service in the post-1996 period. Thus, those who retire on or after 1.1.1996 will have NPA calculated @ 25% added to their pay for

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calculating the amount of pension due to them. It cannot be anybody's case that the pre-1996 retirees i.e. those who served as medical doctors before 1.1.1996 should also be given the benefit of the revised pay scale in the same manner in which the revised scales have been applied to those in service in the post-1996 period. Similarly, since the pre-1996 retirees were not in service on 1.1.1996, they cannot claim NPA @ 25% of pay which is the rate to be applied, in our judgement, only to those who were in service in the post-1st January, 1996 period.

22. In summary, we also find that the liberal treatment meted out to the pre-1986 retirees is a one time measure and so is the treatment, again fairly liberal, given to all the pre-1996 retirees including the survivors among the pre-1986 retirees. The connected rules defining Pension, Emoluments and Average Emoluments will accordingly be deemed to have been amended not permanently but only in order to provide for the pre-1986 retirees and separately for all the pre-1996 retirees. From 1.1.1996 onward, i.e., in respect of those who retire from the aforesaid date and in future, the old rules laying down the aforesaid definitions will apply once again.

23. The learned counsel appearing on behalf of the applicants also had occasion to advance the plea that the 5th CPC has made revolutionary changes in the pattern of grant of pension to the employees. According to them, the aforesaid revolutionary change implies, as

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already argued by them, that the pension of the pre-1st January 1996 retirees will have to be fixed by dividing by two the sum arrived at by adding together the minimum of the revised pay scale and the revised NPA calculated @ 25% of the said minimum of the revised pay scale. We have already seen that such an assessment/determination is not in agreement with the various provisions made in the aforesaid OMs and the rules. As against the aforesaid argument put-forth by the learned counsel, we are inclined to take the view that revolutionary changes relate to aspects different from the aspect highlighted by them. The first revolutionary change, according to us, relates to the pre-1st January 1986 retirees who have been brought on par with the post 1st January, 1986 retirees by notional fixation of pay as explained in paragraph 10(a) above. The second revolutionary change, in our view, is the one which permits upward revision of the pension of the pre-1996 retirees to the minimum of the revised scale of pay for the post held by the pensioner at the time of his retirement. In numerous cases, such a hike will, according to us, lead to considerable gains in pension.

24. For the reasons mentioned in the preceding paragraphs, we find ourselves in agreement with the order of dismissal of OAs passed by this Tribunal on 5.12.2000 in similar cases of Medical Doctors. We do so however, for reasons of our own which, as would appear from the above, are not necessarily the same as those advanced by this Tribunal in passing the order dated 5.12.2000.

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25. We are now left to see as to whether in terms of the relevant rules is it possible to revise pension (downward) after the same has been authorised. The relevant provisions are, we find, available in Rule 70 of the CCS (Pension) Rules, 1972. The aforesaid rule provides that pension once authorised after final assessment cannot be revised to the dis-advantage of the Government servant unless such a revision becomes necessary subsequently on account of detection of a clerical error. The aforesaid rule further provides that once it is decided to rectify a clerical error as above, the retired Government servant will 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. Alternatively it will be open to the Head of Office to direct that such excess payment shall be adjusted in instalments by short payments of pension in future. We find that, by relying on the impugned OM dated 29.10.1999 placed on record, the respondents have simply followed the aforesaid rule and therefore we cannot find any fault with the same. We also find that in the peculiar circumstances of this case the mistake committed at the time of determination of pension initially was clerical in nature inasmuch as the intention of the Govt. reflected in the various O.Ms referred to has remained clear and unambiguous all along. It is a different matter altogether that despite sufficient clarity the same needed to be clarified for the benefit of the various Ministries etc. by DOP&PW's O.M. dated 29.10.1999, which has been impugned by the applicants in this case. In the circumstances, we hold

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and do so categorically that the downward revision of pension of the applicants wherever orders to that effect have been issued has been resorted to on account of a clerical mistake and by no means due to lack of clarity with regard to the intention of the Government in this respect.

26. Lastly, we have also taken a look at the law laid down by the Supreme Court in Union of India & Ors. v. Dr. Vijayapurapu Subbayamma (supra). The learned counsel for the applicants have vehemently argued that Clause (c) of the aforesaid judgement reproduced in paragraph 6 above fully covers the present case and, therefore, the applicants are entitled to payment of revised pension at the rate at which such pension was initially sanctioned in their favour. On careful consideration, we find that the benefit, if any, of the ratio laid down in Clause (c) above will accrue only if an amendment is made to the relevant rules for enhancing pension or for conferring additional benefits. Amendments have, no doubt, been made in certain respects as mentioned in paragraph 21, but these will apply not to the prospective pensioners but only to those who retired before 1.1.1996. In respect of the post-1.1.1996 retirees, revised pay scales have been introduced on the basis of the recommendations of the 5th CPC, and a revised rate of NPA calculated @ 25% has also been introduced. Accordingly, such retirees will, no doubt, receive pension in their turn on the basis of the average emoluments worked out according to Rule 34 of the CCS (Pension) Rules, 1972. This cannot mean, however, that pension has been enhanced or additional

benefits have been conferred in the sense in which such terms have been used in clause (c) of the Supreme Court's judgement referred to. This is a case, on the other hand, in which liberal measures enhancing pension have been introduced in respect of past retirees and, therefore, the ratio of the aforesaid judgement will not find application in the present case. For the same reason the ratio of the judgement of the Supreme Court in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another decided on 9th October, 1998 and reproduced in (1998) 8 SCC 30 will also not apply. The sum and substance of the law laid down by the Supreme Court in V. Kasturi's case (supra) is that where the amendment in rules enhance the pension or provided for a new formula of computation of pension, the earlier retirees who at the time of retirement were eligible for pension and survived till the amendment, would also be eligible for benefit under such amendment from the date it came into effect. In the present case, what has really happened is that in the post-1st January, 1996 scenario, in addition to revising the scales of pay, the respondents have proceeded to lay down a revised formula for the computation of NPA. This new formula for the computation of NPA @ 25% of the basic pay cannot be said to imply laying down a new formula for the computation of pension as such. NPA has been taken into account at the rates applicable at the material time in all cases irrespective of the date of retirement. In this view of the matter, we reiterate that there has been no change in the formula of computation of pension. Furthermore, the formula for the computation of NPA has been revised in the post-1st

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January, 1996 scenario not by amending any of the relevant rules, but by means of a Government decision on the recommendations of the 5th CPC affecting only those in service in the post-1st January, 1996 period. Thus, as stated, the law laid down by the Supreme Court in V.Kasturi's case (supra) will also not find application in the present case.

27. In the back-ground of the above discussions, the OAs are found to be devoid of merit and are dismissed. There shall be no order as to costs.

28. A copy each of this order will be kept on the files relating to the various OAs dealt with herein.

S.A.T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J) 5/10/2001

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