RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ALLAHABAD THIS THE 14th DAY OF May, 2006

HON'BLE MR. K.B.S. RAJAN, MEMBER-J

ORIGINAL APPLICATION NO.984 OF 2004

1. R. Sundaram Son of Late P. Rama Murty, at present residing at F. F-2 Anubhav Terrace, 7 Jambulingam Road Mylapore, Chennai.

2. M.P. Vaidya Son of Late P.R. Vaidya, resident of 768/3 P.Y.C Colony Deecan Gymkhana, Pune (Majarastra).

3. K.D.Kalia Son of Sri M.R. Kalia resident of 48 Surya Enclave Hydrabad, (Andra Pradesh).

4. M.P. Rama Murthy son of Late Sri M.A. Somaya Zulu resident of B-37 F-6 Vijay Nagar Colony, Hydrabad.

5. V. Nagrajan Son of Venkatraman resident of A-1/5 Bhuvaneshwari Apartments Bhartidasan Colony, K. K. Nagar Chenai.

6. B.L. Khurana Son of Late Sri Mehar Chand Khurana resident of G-06, Sarita Vihar, New Delhi.

7. Mukund Lal Dutta Son of Late Chandrodaya Dutta, resident of S-1 Balleyganj Gardore Grand Floor, Kolkotta.

8. Gopal Chand Mukherjee Son of Late Dhirendra Nath Mukherjee, Resident of B.F. 30 Salt Lack City, Kolkotta.

9. M.N. Hukku Son of Late Manohar Nath Hukku, resident of 10/C Hemchhaya 14 IRON side road Balleyganj, Kolkotta.

10. Smt. Shivani Dutta W/o Late Ramendra Nath Dutta E.C. 246 Salt Lack Kolkotta.

11. Smt. Indra Das Gupta w/o Late Sri S. C. Das Gupta, resident of Flat No.45-1/S Lack Evenue, Kolkotta.

12. Smt.Vatsala Naik w/o Sri I. Krishana Das Naik,

Naik resident of 502 Mangla Adesh 4th GeliBar Road Shanta Kunj (East) Mumbai.

13. K. Sundar Rajan Son of Late Kuppbswamy Iyenuar M-15/3.38.38. Cross Seat Vedant Nagar, Chennai.

14. V. K. GOel Son of Late Lohari Ram Ghai, resident of 1710 Street Seeta, 16 Faridabad.

15. Mrs. Asha Deolalikar w/o Late Sri R. G. Deolalikar, C/o V. Raman I.P.O (I.G. Police) 74 Bunglows, Bhopal.

16. Sri R. K. Mazoomdar Son of Late Sri Nishith Kumar Mazoomdar, resident of D/613, Sena Vihar Kammana Hatt Main Road, Bunglore.

. . . . . .ApplicantS

(By Advocate Shri R. P. Tiwari)

V E R S U S

1. Union of India, through Secretary, Defence Production, Ministry of Defence, New Delhi.

2. The Director General, Ordinance Factories/Chairman Ordinance Factories, Kolkotta.

3. Principal Controller, Defence Accounts (Pension) Allahabad, Dropadi Ghat, Allahabad.

. . . . . .Respondents

(By Advocate: Sri R. K. Tewari)

Alongwith

ORIGINAL APPLICATION NO.832 OF 2004

1. O.P. Bahl S/o Late Dr. T. Bahl, resident of 1/41, Punjabi Bagh West, New Delhi -110026.

2. G. R. Narsimhan S/o Late G. R. Rangama, resident of 260 Geeta, 6th Main Road, I Block, Koramangala, Banglore 560034.

3. G. N. Rameshan S/o Late G. N. Nageshwara, resident of Iyer-6, Kalpataru, 87 Santhome High Road, Chennai - 600028.

4. C. Madhavan S/o Late C. V. Chandra Sakaran,
B-3 Alsa Enclave 30, F Block,
Annanagar East, Chennai-600102.

5. S. Thigrajan S/o Late T. Subramania Tyer,
resident of 16 9New 17) I Street Parmeshwar
Nagar Adyer, Chennai - 600020.

6. Mrs. S. U. Karmarkar W/o Late V Karmarkar,
P.O. & Village Sasuna via Alibagh,
Dist Raigad, Maharashtra-402201.

7. P.L. Jalota S/o Late M.R. Jalota
resident of 507 Sector 10-D,
Chandigarh-160011.

8. C. S. Gauri Shankar S/o C. G. Subramanian,
resident of A 18 Shiva Apartments,
5-A East Coast Road,
Thiruvartimyar, Chennai 600041.

9. Mrs. E. Thomas W/o M.M. Thomas
resident of Anugrata 22 De Coasta Layour,
Bangalore - 560084.

. . . . . .Applicants.

By Advocate: Shri R. P. Tiwari

Versus

1. Union of India, through Secretary, Defence Production, Ministry of Defence, New Delhi.

2. The Director General, Ordinance Factories/Chairman Ordinance Factories,
Kolkotta.

3. Principal Controller,
Defence Accounts (Pension) Allahabad,
Dropadi Ghat, Allahabad.

. . . . . .Respondents

(By Advocate: Sri S. C. Mishra)

Alongwith

ORIGINAL APPLICATION NO.1281 OF 2004

1. Jagdish Mitra Kawlra,
Son of Late C. L. Kawlra,
Resident of A-1, Uttarayan Enclave,
University Road, Pachpedi,
Jabalpur (M.P.) 482001.

2. C. N. Govindan, Son of Late C. G. Nagrajan,
R/o Flat No.G/1, Hariyana,
68 Greenbage Road,

R. A. Puram, Chennai-600028.

3. S. Kannan, Son of Late R. S. Shri Nivasan,
present residing at 9 Firnds Enclave,
Collector Office Road Triuchirapalli-620001.

4. Y. E. S. Trivedi,
Son of Late S. S. Trivedi,
Presently residing at 130, APR Colony,
Katanga Jabalpur-482001.

5. A. K. Dam, Son Of Late A. M. Dam,
R/o Flat No.D-1, 56 A, South End Park,
Kolkata-700029.

6. Chandramohan Mathur, Son of Shri R. M. Mathur,
R/O E-9, Green Wood City, Sector 46,
Gurgaon (Hariyana) 122003.

7. Smt. Sulekha Chaterjee,
Wife of Late Dr. Durga Prasad Chatarjee,
R/O 124/2, Dowangagaji Gajiroad, Post Office
Balli, District Howrach (West Bengal) 7110201.

8. Mst. Visnoi, Wife of Late K.K. Visnoi,
Resident of Chandravilla, Bhimatal Road,
Bhowali, District Nainital.

. . . . Applicants

By Advocate: Shri R. P. Tiwari

Versus

3. Union of India, through Secretary, Defence Production, Ministry of Defence, New Delhi.

4. The Director General, Ordinance Factories/Chairman Ordinance Factories, Kolkotta.

3. Principal Controller,
Defence Accounts (Pension) Allahabad,
Dropadi Ghat, Allahabad.

. . . . . .Respondents

(By Advocate: Sri S. Singh)

O R D E R

Since in all these three O.As, the relief(s) claimed are identical and similar, they have been heard together and are being disposed of by this common and consolidated order.

2. Applicants were Civilians in Defence Services. Their services/Pensions are governed by the Central Civil Services (Pensions) Rules, 1972. Under Rule 70 of CCS (Pension) Rules 1972, once a pension has been finalized and fixed any downward revision is illegal except if it is due to clerical error, in which case also special procedure laid down, is to be followed. The Rule states as under:-

> *"Pension once authorized after final assessment should not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently. If such error is detected after a period of two years from the date of authorization of pension, concurrence of Department of Personnel and Training is necessary for the revision, if it is to the disadvantage of the pensioner."*

3. The applicants are Senior citizens mostly in the age group of 75 to 90 years. That initially PPO is issued immediately on retirement but subsequently amendments are issued by means of Corrigendum PPO as and when pension is revised and re fixed from time to time.

4. After Vth Pay Commission, the Controller of Defence Accounts, (Pensions), issued Corrigendum PPO, fixing pension/family pension of the applicant as Rs.12,025/-/ Rs.7215/per month w.e.f. 1.1.1996. The basis of this fixation was that at first pay of retirees was notionally fixed as 1.1.1986 in the IVth Pay Commission Scale of the Post of Rs.7300-8000. The pension was then calculated according to normal rates but was stopped upto 50%/30% of minimum

revised pay scale of Vth Pay Commission on the basis of the post of Additional Director General/Member. The Government of India, issued a letter on 30.6.1999 revising the pay scale of pay of the post of Additional D.G.F. from 22400-26000 to 24050-26000 w.e.f. 1.1.1996. After fixation of pension/family pension at Rs.12025/7215, arrears from 1.1.1996 were paid to the applicants and applicants in turn paid required Income Tax against the arrears of pensions. All of sudden the Principal Controller of Defence Accounts (Pensions) issued a revised PPO dated 27.4.2004 and on other dates, reducing pension/family pension to Rs.11, 200/6720 and that too w.e.f. 1.1.1996.

5. Version of the respondents is that downward revision of pension became necessary due to policy decision. This tribunal passed a stay on PPOs of downward revision. The pension disbursing authorities have been instructed to stop recoveries of overpayment which resulted due to downward revision and for restoration of pension at the higher rate for which further instructions is awaited from Government till the case are finally decided. Respondents have taken up the matter with the Department of P&PW at appropriate level for restoration of higher rate/notification in the light of direction of the C.A.T. on this issue. The decision has still not been communicated. Consequent upon the recommendation of the Vth C.P.C.

Pensions were categorized in two classes i.e, pre-86 retirees and post-86 retirees. Pension of all the pre-86 retirees may be updated by notional fixation of their pay as on 01.01.1986 by adopting the same formula as for serving employees and thereafter for the purpose of consolidation of their pension/family pension. Those who retired on or after 01.01.1986, revision has been made in accordance with department of Pension and Pensioners Welfare OM. Dated 17.12.1998 which stipulated Pension of all pensioners shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.1996 and family pension not less than 30%. Accordingly, pension/family pension of the petitioners were revised to Rs.12, 025/-. Rs.7,125/- ~~215/-~~ w.e.f. 01.01.1996 as per recommendation of Government of India letter dated 17.12.1998 in the revised pay scale held by the petitioners. Since this clarification was issued on 11.05.2001 on Government letter dated 17.12.1998, the petitioners whose pension was earlier notified under that letter have to be recomputed and revised downward. Therefore, the petitioners are making a case based on the pay of the post introduced as on 01.01.1996 ignoring the clarification of Government that it was the corresponding scale of pay which has become relevant in their cases and their pensions were accordingly down-warded. The petitioners revised pensions family pensions were earlier fixed on the basis of revised pay-scale of 24050-26000 and this

was made applicable from 01.01.1996. Actually their pensions were to be revised on the corresponding pay scale of Rs.22400-26000 (Old pay scale 7300-8000). The respondents revised their pension/family pensions accordingly.

6. Hon'ble Shri Justice V.S. Aggarwal, Chairman, Hon'ble Shri Justice P. Shanmugam, Vice-Chairman and Hon'ble Shri Justice V. Lakshmi Ratan, Member(A) passed order dated 29.4.2005. Operative portion of the order dated 29.4.2005 is as under:-

> *"The present original application may be decided in the light of Judgment and orders dated 29.04.2005 and 08.06.2005 passed by Hon'ble Central Administrative tribunal, Bangalore Bench, Bangalore, so that justice may be done."*

7. The question for consideration is whether pension once fixed cannot be reduced at all, and if it could be reduced, what conditions ought to be fulfilled before reduction.

8. In the instant case, the authorities have by the impugned orders dated 27.4.2004 and 12.5.2004 sought to reduce the pension/family pension w.e.f. 1.1.1996. This entails:

a. Re fixation of pension at a reduced rate.

b. Recovery of excess amount of pension consequent to re fixation with retrospective effect.

9. The above cannot be implemented except after issue of show cause notice in advance and in so far as recovery of excess amount of pension, the same

cannot be made unless such an excess payment was made due to any misstatement by the applicants on account of whom they were paid the higher rate of pension.

10. As regards recovery the apex court in the case of. Sahib Ram Vs State of Haryana (1995) Suppl. (1) SCC 18 has held as under:-

> *"It is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong constructions made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant.*

11. As regards reduction in pension, as per the rules cited above, reduction for valid reason is permissible. The attendant conditions namely approval by the Ministry of Personnel is a pre requisite. In fact an identical issue came up for consideration before the Full Bench in O.A. No.504/2004 and other connected matter of the Bangalore Bench in which the reference made to the Full Bench is as under:-

1. *Whether the expression revised scale of pay introduced with effect from 1.01.1996 of the post mast held by the pensioner would not mean minimum corresponding scale of pay as on 1.01.1996 held by the pensioner at the time of superannuation/retirement?*

2. *Whether the pension should be with reference to the corresponding scale of pay and not on replacement scale?*
3. *Whether the up gradation of post and the consequential fixation of pay would come within the meaning of corresponding scale of pay?*
4. *What it the effect of the expression "post last held" occurring in the O.M.s. dated 17.12.1998 and 18.05.2001.*

12. The said reference was answered in the following terms vide order dated 29.4.2005.

".....The expression revised scale introduced with effect from 01.01.1996 of the post last held by the pensioner to mean minimum revised scale of pay as on 1.01.1996.
The pension shall not be less than 50% of the minimum of the pay of the post in the scale as revised by the 5th Central Pay Commission.
The up gradation of posts and consequential fixation of pay would not be the minimum pay of the post in the scale as revised by the 5th Central Pay Commission.
The expression 'post last held' would mean the pay fixed with reference to the post last held at the minimum pay of the scale revised.

13. With the above law the case of the applicants has to be examined. The applicants' pay scale was revised from 22400-26000 to 24050-26000 w.e.f. 1.1.1996 vide Government of India, Ministry of Finance OM dated 30.6.1999. According to the respondents this revision was found incorrect as per order dated 11.05.2001. This order dated 11.5.2001

was referred to in the aforesaid Full Bench Judgment. The Full Bench has not commented anything in respect of the said order in a manner which would be adverse to the applicant. Nor either directly or be implication the said order reduces the pay scale 24050-26000 to 22440-26000. Thus the pay of the applicant cannot be reduced. Even if there were no justification for such reduction, the pay scale cannot be reduced without necessary show cause notice. Admittedly this has not been done. As such the pension of the applicants as per the recommendations of the Vth Pay Commission and as per the decision of the Full Bench shall be 50% of the minimum of the pay scale applicable to the post held by the applicants. This is what exactly that the applicant were originally sanctioned and paid. There is therefore, no scope for reduction of pension much less with retrospective effect and the list recovery of alleged excess amount of pension.

14. The applicants in O.A. No.984/2004 had referred to an order dated 20.5.2005 in O.A. No.2863/2004 of the Principal Bench. In that case the applicants retired from service between the years 1976 and 1994 and the pay w.e.f. 1.1.1996 admissible to the post held by the applicants at the time of their retirement was Rs.26000/- (fixed). As such the pension of the applicants was correspondingly fixed at Rs.13000/-. However, the same was sought to be reduced to Rs.11, 200/- w.e.f. 1.1.1996. The

applicant therein agitated against the same on the strength of the judgment of the Hon'ble Delhi High Court in the case of S.C. Parasher Vs. U.O.I. and Ors. (109) (2004 Delhi Law Time 86-DB). The Tribunal after profusely extracting the judgment of the Delhi High Court allowed the O.A. and directed the respondents to restore the pension of the applicants. According to the applicant, special Leave petition by the Railway filed before the Supreme Court in another matter, Secretary, Railway Board and Anr. Versus Amarnath Wanchoo and Ors. Was dismissed on the ground that similar matters have already been dismissed.

15. The counsel for the respondents has referred to the Judgment of the Bangalore Bench dated 8.6.2005 in O.A. No.706/2004 and according to the same if re fixation was erroneous respondents are right in rectifying the mistakes. In the instant case since the re fixation of erroneous and original fixation was accurate, the respondents are disentitled to reduce the pension. The judgment of the Principal Bench in O.A. No.2863/2004 squarely applies to the facts of this case.

16. In view of the above, **all the three O.A.s succeed**. The impugned orders dated 22.7.2004 and 12.05.2004 in O.A. No.832/2004 are hereby quashed and set aside. It is declared that the [illegible] pension fixed on the basis of the minimum of the pay

scale of Rs.24050-26000/- if correct and hence does not call for any downward revision. The respondents are directed not to reduce the pension nor recover any amount from the pension of the applicants.

17. The applicants are in their late evening of their life. The extent of anxiety that would have caused in their mind owing to this litigation can be easily visualized. Obviously the mistake is on the part of the respondents. Certainly all the applicants would have incurred expenses in prosecuting this case which they were forced due to the clear mistake on the part of the respondents. As such each applicant deserves cost in his favour and against the respondents. Accordingly, the respondent no.1 is directed to pay cost to each of the applicant in these O.A.s and the cost payable to each of the applicant is quantified at Rs.3000/- per head. This amount shall be paid to the applicants within a period of two months from the communication of this order.

18. Copy of this order be placed in all the connected O.As.

MEMBER-J

Girish/-