

*Reserved*

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

This the 9 day of July, **2009**.

**HON'BLE MR. A. K. GAUR, MEMBER (J)**

**ORIGINAL APPLICATION NO. 658 OF 2007**

1. R. Sundaram Son Late Rama Murthy, at present residing at flat no. C-1 Aditya 20 old 55 New Raj Shekharam State Mylapur, Chennei-4.
2. M. P. Vaidya son of Late P. R. Vaidya Resident of 758/3 P.Y.C. Colony Deecan Gyakhana, Puna (Maharestra).
3. K.O. Kalia Son of Shri M.R. Kalia Resident of 48 Surya Enclave Mydrabad (Andhra Pradesh).
4. Mrs. Ram Murthy wife of late M.P. Ram Murthy Resident of 8-37 F-6 Vijay Nagar Colony, Hydrabad
5. V. Nagrajan Son of Venkatraman Resitdent of A-1/5 Shuvaneshwari Apartments Shartidasan Coloni K.K. Nagar Chennai.
6. B. L. khurana Son of Late Shri Mehar Chand khurana Resident of G-60 Sarita Vihar, New Delhi.
7. Mukund Lal Dutta Son of Late Chandradaya Dutta, Resident of S-1 Balleyganj, Garders Grand Floor Kolkatta.
8. Gopal Chand Mukharjee Son of Late Dhirendra Nath Mukharjee, Resident of B.F. 30 Salt Lack City Kolkatta.
9. Smt. Shivani Duta Wife of Late Ramendra Nath Datta B.C. 246 Salt Lack Kolkatta.
10. Smt. Indra Des Gupta Wife of Late S.C. Das Gupta Resident of Flat No. 48-1/5 Lack Evenue Kolkatta.
11. Smt. Vatsala Naik Wife of Sri I. Krihsna Das Naik, Resident of 502 Mangla Adesh 4<sup>th</sup> Golibar Road Shanta Kunj (East) Mumbai.

12. K. Sundar Rajan Son of Late Kuppbowamy lyenuer m15/3,38,28 Cross Seat Vedant nagar Chennai.
13. V. K. Ghai Son of Late Lohari Ram Ghai, resident of 1710 Street Seeta, 15 Faridabad.
14. Mrs. Asha Deolalikar wife late R.G. Deolalikar c/o V. Raman I.P.C. (I.G. Police), 74 Bunglows, Bhopal.
15. Sri R. K. Mazoomdar Son of Late Shri Nisjith Kumar Mazoomdar, Resident of D/613, Dena Vihar Kammana Halt Main Road, Bunglore.
16. O.P. Bhal Son Late Dr. T. Bhal, Resident of 1/14, Punjabi Bagh West, New Delhi-110026.
17. G. R. Narsimhan Son of Late G. R. Rangama, Resident of 260 Geeta, 6<sup>th</sup> Main Road, I Block, Koramangala, Bunglore 560034.
18. G. N. Ram sheshan Son of late G.N. Nageshwsara, Resident of lyer 6, Kalpatra 87 Santhome High road, Chennai 600028.
19. C. Madhavan Son of Late C.V. Chandra Sakaran, B-3 Alsa Enclave 30, F Block, Annanagar East, Chennai-600102.
20. S. Thigrajan Son of Late T. Subramania Tyer, Resident of 16 (new 17) I Street Parmeshwar Nagar Adyer, Chennai-600020.
21. Mrs. S. Karmakar wife of late V. Karmarkar, Post and Village Sasuna via Alibagh, District Raigad, Maharashtra 402201.
22. P. L. Jalota Son of late M. R. Jalota, Resident of 507 Sector 10-D, Chandigarh-160011.
23. C. S. Gauri Shankaran Son of C. G. Subramanain, Resident of A-18 Shiva Apartments, 5-A East Coast Road, Thiruvartimyar, Chennai 600041.
24. Mrs. E. Thomas wife of M.M. Thomas Resident of Anugrata 22 DE coasta Layour, Bangalore- 560084.
25. Jagdish Mitra Kawlra, Son of Late C.L. Kawlra, Resident of A-1 Uttarayan Enclave, University Road, Pachpedi, Jabalpur (M.P.) 482001.

26. C. N. Govindan, Son of Late C. G. Nagrajan, Resident of Flat No. G/1, Hariyana, 68 Greenbadge Road R.A Puram, Chennai-600028.

27. S. Kannan, son of Late R.S. Shri Nivasan, present residing at 9 firnds Enclave, Collector Office road Triuchi rapalli 62000.

28. Y. S. Trivedi, son of S. S. Trivedi, presently residing at 130, APR Colony, Katanga Jabalpur-482001.

29. A. K. Dam, son of late A. M. Dam, Resident of Flat no. D-1, South End Park, Kolkatta 700029.

30. Chandramohan Mathur, son of shri R. M. Mathur, Resident of E-9 Green Wood City Sector 46, Gurgaon (Hariyana) 122003.

31. Smt. Sulekha Chaterjee, wife of late Dr. Durga Prasad Chatarjee, Resident of 124/4, Dowangagaji Gajiroad, Post Office Balli, District Howrach (West Bengal) 7110201.

32. Smt. Bisnoi wife of late K. K. Visnoi Resident of Chandravilla, Bhimatal Road, Bhowali, District Nainital.

.....Applicants

#### VE R S U S

1. Union of India through Secretary, Defence production, Ministry of Defence New Delhi.
2. The Director General, Ordnance Factories/Chairman Ordnance Factory Kolcutta.
3. Principal Controller, Defence Accounts (Pension) Allahabad Draupadi Ghant Allahabd (U.P.).

.....Respondents

Present for the Applicants:-

Sri R. P. Tiwari

Present for the Respondents:

Sri Ajay Singh

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**O R D E R**

**BY HON'BLE MR. A.K. GAUR, Member (J).**

By means of this Original Application, the applicants have claimed following main relief/s.

*"(a). Issue a writ, order or direction in the nature for setting aside impugned PPO/letter dated 30.3.2007 issued by the respondent no. 3 a contained is annexure-1 to compilation-1 of this original application.*

*(b). Issue a writ, order or direction in the nature of mandamus directing the respondent not to impleadment PPO/order dated 30.3.2007 issued by respondent no. 3 which have already being sent for compliance to the branch Manager of concerned Bank and pension disbursement authority copy of the impugned PPOs/orders sent to the applicants for information."*

2. The applicants are aggrieved by the order dated 30.03.2007 passed by Principal Controller Defence Accounts (Pension) Allahabad, whereby the Respondent No. 3 directed the Manager of the concern Bank to make payment at reduced rate, with immediate effect as per notification No. C/Corr/Fys/Post-86/5141/2003. All the applicants have already been retired from services several years ago. Some of the applicants have already died, hence family pension is being given to the claimant & nominee of the retired employees, and pension to the retired employees. The applicants were working as Civilian in the Defence Services, and governed by the Central Civil Services

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(Pension) Rules 1972 (hereinafter referred to as C.C.S. Pension Rules 1972).

4. According to the applicants the initial Pension Payment Order was issued by the Pension Sanctioning Authority immediately after retirement of the applicants, but subsequently amendments were issued by means of corrigendum PPO, as and when pension were revised and re-fixed from time to time.

5. After implementation of the V<sup>th</sup> Pay Commission, the Controller of Defence Accounts (Pension), Allahabad issued a corrigendum PPO, fixing Pension/family Pension of the applicants @ Rs. 12,025/- Rs. 7,215/ per month with effect from 01.01.1996. The applicants have already received the arrears of difference of pension/family pension. The applicants have also paid income tax towards grant of pension/family pension already received by them. A copy of the corrigendum letter dated 30.06.1999, by which the revision of pay scale of the post of Additional Director General, Rs. 22,400-24,500 in place of Rs. 18,400-22,400 was issued with effect from 01.01.1996 has been filed and marked as Annexure-2 (compilation II) to the original application. PPOs of different dates were issued in respect of all the applicants and all of them have already received arrears of the pensions/family pension.

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6. The grievance of the applicants is that, all of sudden, the Principal Controller of Defence (Pension), Allahabad, Respondent No. 3 issued a revised P.P.Os. dated 27.04.2004, 12.05.2004, 24.08.2004, 21.04.2004, 02.05.2004, 02.06.2004 and 03.09.2004 etc. whereby the pension/family pension has been revised lowering the amount to Rs. 11,200/6720/-, since 01.01.1996, in place of Rs. 12,025/7215, Copies of the P.P.O. letter dated 27.04.2004, 12.05.2004, 24.08.2004, 21.04.2004, 02.05.2004, 02.06.2004 and 03.09.2004, has been filed as Annexure-3 to the O.A. No notice or opportunity has been given to the applicants in accordance with Rule 70 of C.C.A. (pension) rules 1972. The Competent Authority has already issued order and recovered the excess amount of pension/family pension from the applicants. Aggrieved by the action of the Respondents, the applicants preferred Original Application No. 984 of 2004, Original Application No. 832 of 2004, and 1281 of 2004. All the aforesaid Original Applications filed together were allowed by this Tribunal vide judgment and order dated 14.03.2006, with cost payable to each of the applicants quantified as Rs. 3000/- each. This amount was directed to be paid within a period of 2 months from the communication of the order, a copy of the judgment and order dated 14.06.2006 has been filed as Annexure-4. In compliance of the judgment and order dated 14.03.2006, the Respondents were directed by the Concerned Banks to restore the pension/family pension of the applicants on higher rate and

refund the amount already recovered, due to down ward revision of pension/family pension. All of sudden, Respondent No 3 issued P.P.O. dated 30.03.2007 to the concerned Bank to make payment of pension/family pension at reduced rate to the applicants with immediate effect. It is alleged by the applicants that, the order dated 30.03.2007 has been passed against the spirit of judgment and order dated 14.03.2006 rendered by the Tribunal.

7. It is also submitted by the applicants that, under rule 70 of the C.C.S. (pension) rule 1972, once pension/family pension has been finally settled, any change to the detriment of the applicants is not permissible without affording opportunity of hearing. The impugned P.P.O. dated 30.03.2007, is illegal arbitrary and without jurisdiction. Under rule 70 of CCS (Pension) Rule only clerical error could only be rectified and that too within 2 years. A photo copy of the rule 70 of C.C.S. (Pension) rule 1972 has been filed as Annexure-5.

8. In the Counter reply filed by the Respondents, it is submitted that during implementation of V<sup>th</sup> Central Pay Commission pension/family pension of applicants were revised to Rs. 11,200/- Rs. 6,720/- per month w.e.f. 01.01.1996 in pay scale of 22,400-24,500, normal replacement pay scale of Rs. 7,300-8,000 On applicant's representations their pension/family

pension has earlier been revised to Rs. 12025/- Rs. 7215/- in place of Rs. 11200/- Rs. 6720/- in accordance with Government of India, Ministry of PPG & P, Dept of P & PW OM No. 45/10/98 dated 17.12.98 (Photocopy attached as Annexure-CA-1). It is mentioned that the upgraded replacement scale for Rs. 7300-8000 was introduced as Rs. 24050-650-26000/, and was made applicable w.e.f. 01.01.1996. Since, the applicants were retired prior to 01.01.1996 this upgraded scale was not applicable in their cases. As a matter of fact this upgraded scale is applicable only to those cases, where Addl. DGOF held the post as on 01.01.1996. In the recommendation of V<sup>th</sup> Pay Commission and part D of first Scheduled, it was made clear that for grant of higher revised rates for eligibility department/ministry were required to change recruitment rules, restructuring of cadres, re-distribution of post into higher grade etc. but such scales shall be implemented from prospective effects, and the concerned post will be governed by the normal replacement scale. It is also mentioned that a pensioner cannot be identified with the post he held, but the scale in which he retired, for the purposes of all terminal benefits, pension including family pension, etc., for the reason that the post may undergo many changes because of up gradation, merger, cadre restructure, re-distribution etc. A pensioner, who was not in the service when subsequent, change took place in the post he held, cannot claim that his pension shall be co-related with all the

subsequent change in the post. Therefore, the corresponding scale to the scale in which the applicants retired, is the scale, to be taken into consideration for the purposes of revision of pension of a pensioner.

9. It is also submitted by the Respondents, that further revision has been made to Rs. 11200/- 6720/- since 01.01.1996 by the Government of India Ministry of PPG & P, Deptt of P & PW letter No. 45/86/97 P & PW (A) dated 11.05.2001, in which clarification regarding government of India letter dated 17.12.1998 is as under:

*"Pension of all the pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scales as on 01.01.1996, of scale of pay held by the pensioners at the time of superannuation/retirement".*

Since this clarification was issued on 11.05.2001 (copy of the same is enclosed as Annexure-CA-2), Petitioners whose pension/family pension earlier notified under that Government letter have to be recomputed and revised downward.

10. In paragraph 10 of the Counter Affidavit it is clearly stated by the Respondents that now, the Hon'ble Supreme Court vide their Judgment dated 23.11.2006 (annexed as Annexure-CA-3) has set aside the judgment of Delhi High Court in S.C. Parasher Vs. Union of India and upheld the judgment of Madras High

Court in WP No. 2444-2451//2001 dated 29.04.2005. The Hon'ble Supreme Court has held that DOP & PW OM No. 45/86/97 P & PW (A) dated 11.05.2001 is valid. DP & PW has also issued direction in this regard vide their letter no. 38/109/2006 dated 27.12.2006 (copy enclosed as Annexure-CA 4) which stipulates that since, the Supreme Court Judgment dated 23.11.2006 has set aside Delhi High Court judgment and held OM dated 11.05.2001 as valid, therefore, the judgment of all other High Court and CAT holding OM dated 11.05.2001 as null and void stand set aside in the light of Supreme Court judgment dated 23.11.2006. The Competent Authority has also directed all the Ministries' and departments to revise pension of Pre-96 pensioner in terms of OM dated 17.12.1998, and OM dated 11.05.2001 read together. In the light of the Supreme Court judgment dated 23.11.2006 and DP & PW OM dated 27.12.2006, the respondents have already directed all the concerned PDAs, vide letter no. GI/C/PRE-86/ court case/07 dated 30.03.2007, to make payment of pension at reduced rate.

11. Learned Counsel for the applicants, has filed the Rejoinder Reply, denying the facts stated in the Counter Affidavit and reiterated the same fact as indicated in the Original Application. Respondents have also filed Supplementary Counter Affidavit, it is clearly mentioned in the Supplementary Counter Affidavit that the upgraded replacement scale of Rs. 7300-8000 was

introduced as Rs. 24050-650-26000 and the same was applicable w.e.f. 01.01.1996, since the petitioners were retired prior to 01.01.1996, this upgraded scale was not applicable in their cases. It was applicable only in those cases where Addl. DGOF held the post as on 01.01.1996. As such the corresponding scale to the scale in which the petitioners have retired, is the scale and the same is to be taken for the purposes of revision of pension of the petitioners.

12. I have heard Shri R. P. Tiwari, Learned Counsel for the applicants, and Shri Ajay Singh, Learned Counsel for the respondent no.3 and perused the written argument filed by the parties counsel. Learned Counsel for the applicants vehemently argued that the applicants have already challenged P.P.O. dated 27.04.2004, and 12.05.2004, by which order to reduce the pension/family pension of the applicants were passed since 01.01.1996, and after hearing parties counsel this Tribunal allowed the O.A. with cost of Rs. 3000/- per applicant, vide judgment and order dated 30.04.2006. As the order dated 30.04.2006 has already become final, in the facts and circumstances of the case, there is hardly any justification for the Respondents to revise the pension/family pension of the applicants down-ward without giving any notice or opportunity of hearing. It is also argued that pension once settled and paid to the applicants should not be revised to the disadvantage of the

applicants unless such revision became necessary on account of detection of a clerical error and such error must be detected within a period of two years from the date of authorization of pension. After two years there is no scope for revision of pension under rule 70 of C.C.S. (Pension) Rule.

13. Shri Ajay Singh Learned Counsel for the Respondents No.3 argued that, on applicants' representations their pension/family pension has been revised earlier to the tune o Rs. 12,025/- and Rs. 7,215/- in place of Rs. 11,200/- Rs. 6,720/- in accordance with Government of India, Ministry if PPG & P, Deptt of P & PW OM No. 45/1/98 dated 17.12.1998, as all the petitioners had retired prior to 01.01.1996, this upgraded scale was not applicable in their cases. According to Mr. Ajay Singh, learned counsel for the respondent no. 3, this upgraded scale is applicable only in those cases where Addl. DGOF held the post as on 01.01.1996. In the recommendations of Vth Pay Commission and Part D of first Scheduled, it is clearly mentioned that for grant of higher revised rates for eligibility, department/Ministry were required to change the recruitment rules. Learned Counsel for the respondent would further contend that a pensioner cannot be identified with the post he held but the scale in which he retired, for the purpose of grant of terminal benefits, pension including family pension etc. etc..

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14. Learned Counsel for the Respondents also invited my attention to Government of India's letter dated 11.05.2001, in which clarification regarding Government of India letter dated 17.12.1998 has been given as under:-

*"Pension of all the petitioner irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scales as on 01.01.1996 of scale of pay held by the pensioners at the time of superannuation/retirement". Since, this clarification was issued on 11.02.2001 petitioners whose pension/family pension earlier notified under that Government letter have to be recomputed and revised downward."*

15. Learned Counsel for the Respondent, would further contend that, Hon'ble Supreme Court vide judgment and order dated 23.11.2006 has set aside the judgment of Delhi High Court in the case of S. C. Parasher Vs. Union of India and upheld the judgment of Madras High Court dated 29.04.2009. It is clearly held by Hon'ble Supreme Court that OM dated 11.05.2001 is valid. DP and PW has also issued direction in this regard vide their letter dated 27.12.2006. The Hon'ble Apex Court has already held vide judgment and order dated 23.11.2006, that OM dated 11.05.2000 is valid, therefore the Contrary judgment of all other High Courts and Tribunal are illegal arbitrary and without jurisdiction. Accordingly all the departments were directed to revise the pension of Pre 96 pensioners in terms of OM dated 17.12.1998 and OM dated 11.05.2001.

16. I have also carefully considered the argument advanced by the parties counsel and in my considered view the matter involved in this case is not a clerical mistake, but it has taken place due to change in the Government policy. The provisions of Rule 70 of CCS (Pension) Rule are not applicable in the present case, as all the applicants have already been retired from their services prior to 01.01.1996 and this upgraded scale was not applicable in their cases. This upgraded scale was applicable only in those cases where Additional DGOF held the post as on 01.01.1996.

17. Having given my thoughtful consideration to the pleas advanced by the parties counsel, I am satisfied that the decision rendered by Hon'ble Supreme Court dated 23.11.2006, has already set aside the order passed by Hon'ble Delhi High Court and held that the OM dated 11.05.2005 is valid. In the light of the decision given by Hon'ble Supreme Court. The applicants are not entitled to the reliefs claimed.

18. In my considered opinion, as all the applicants have already retired prior to 01.01.1996, this upgraded scale was not applicable in their cases and the Competent Authority has rightly passed order of down-ward revision of pension/family pension of the applicants. No other error could be pointed out by

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the applicants in the letter issued by the Respondent No. 3 (Annexure-1).

19. In view of the aforesaid observation, I do not find any ground for interference. Accordingly the Original Application is dismissed. No costs.

*Arjan*  
Member (J)

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