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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. Nos. 565/87, 101/88, 102/88, 156/88, 221/88, 243/88, 244/88.
Tax No.

DATE OF DECISION 10-7-1992.

Jayantilal Popatlal Jani & Ors. Petitioner s

Mr. Y.H. Vyas & Advocate for the Petitioner(s)
Petitioner-in-person.
Versus

Union of India & Ors. Respondents

Mr. M.R. Bhatt for Mr. R.P. Bhatt. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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O.A. 565/87

Jayantilal Popatlal Jani,
Retired Assistant Commissioner
of Income tax,
9-Kendriya Karmacharinagar,
Near Ranna Park,
Ghatlodia Road, Ahmedabad.

(Advocate: Mr. Y.H. Vyas)

O.A. 101/88

Kantilal Ishwarbhai Thakkar,
2, Amrut Park,
Behind Shankar Ashram,
Paldi, Ahmedabad.

(Petitioner-in-person)

O.A. 102/88

Gautam Karanlal Pandya,
Opp. St. Xavier's College
Suman 6, River Colony,
Navrangpura, Ahmedabad.

(Petitioner-in-person)

O.A. 156/88

Veerprasad Vishwanath Mehta,
8-B, Yogi Krupa,
Raghunath Park,
Nava Vadej, Ahmedabad.

(Petitioner-in-person)

O.A. 221/88

Christie Saul Martin,
202 Law Garden Apartments,
Opp. Law Garden,
Ellisbridge, Ahmedabad.

(Petitioner-in-person)

O.A. 243/88

Bhanuprasad Harilal Kanuga,
Anand Vatika Society,
Near 'L' Colony,
P.O. Polytechnic,
Ahmedabad.

(Petitioner-in-person)

O.A. 244/88

Rameshchandra Chhotalal Bhatt
by his legal heir and wife
Smt. Indira Rameshchandra Bhatt,
2, Vidyanagar Society-I
Usmanpura, Ahmedabad.

(Petitioner-in-person)

..... Applicants.

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1. Union of India (Notice to be served through Ministry of Finance, North Block, New Delhi)
2. The Chairman, Central Board of Direct Taxes North Block, New Delhi.
3. Chief Commissioner (Adm.) and C.I.T. Gujarat-I, Ayyakar Bhavan, Ahmedabad.
4. Zonal Accounts Officer (C.B.D.T.) Vasupujya Chambers, Near Ayakar Bhavan, Ahmedabad.

(Advocate: Mr. M.R. Bhatt for Mr. R.P. Bhatt.)

.... Respondents.

COMMON JUDGMENT

O.A. 565 /87, 101/88, 102/88,
156/88, 221/88, 243/88,
and 244/88.

Date: 10-7-1992.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. Y.H. Vyas, learned advocate for the applicant in O.A. 565/87 and applicants-in-person in and rest of the matters / Mr. M.R. Bhatt for Mr. R.P.Bhatt, learned advocate for the respondents.

2. All these seven applications filed by the retired officers of the Income Tax Department of the Government of India, under section 19 of the Administrative Tribunals Act, 1985, are heard together and are being disposed of by a common judgment with the consent of the parties in all these matters. The substance of the common grievance of the applicants

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of these seven applications is that the terms of reference of the Fourth Central Pay Commission set up by the Government of India by notification dated 29th July, 1983, later enlarged to cover interim relief and pensionary benefits also and the recommendations of the Fourth Central Pay Commission should have been implemented from 29th July, 1983, the date of the notification and that their implementation from a much later date which is a cut out date 1st January, 1986 deprived the applicants of the benefits of revised pay and revised pensionary benefits of revised pay, though they were in service after the said notification of 29th July, 1983 but had retired before 1st January, 1986. It is alleged that the said effective date 1st January, 1986 is arbitrarily chosen for commencement of the implementation of the recommendations of the Pay Commission. The relief is, therefore, prayed in all these seven cases for declaration that the applicants are entitled to revised commutation of pension and the pay scales from 29th July, 1983 and entitled to pension gratuity on revised pay scales as payable to those who retired after 1st January, 1986.

3. The applicant, Jayantilal Popatlal Jani of O.A. 565/87 retired on 30th September, 1984 from service on attaining the age of superannuation. The applicant having retired on 30th September, 1984, the Accounts Officer by an order dated 20th October, 1984 fixed his monthly pension at Rs. 1096/-.

at consumer price index 560. The applicant has mentioned the calculation of his pension in para 6.19 of his application. He received commuted value of pension and also gratuity. On 24th June, 1987 and zonal Accounts Officer revised the pension of this applicant to Rs.1864/- which included existing dearness relief upto CPI 608 points at Rs. 463 and Additional relief equal to difference between existing fixed dearness relief of Rs. 463 and the notional relief calculated at 70% of existing pension. He has also mentioned in para 6.28 of his application that the Accountant General revised the pension raising it from 1096/- to 1213/- on account of abolition of slab system and granted further increase of Rs. 117/- and at the time of this application his revised pension fixed was Rs. 1981/-. According to him, the revised scales of pay at consumer price index at 608 in respect of the post of Assistant Commissioner of Income Tax would be Rs. 3700-125-4700-EB-150-5000 and he has prayed that he is entitled to that revised pay scale and that he is entitled to pension, commutation of pension and gratuity in the revised pay scale as would be payable to Government employees who retired after 1st January, 1986.

In para 6.32 of his application he has stated that if pension is fixed notionally in revised pay scales from 1.10.1984 it would be Rs. 1935/- p.m. This applicant has amended his application by adding para 7(a), 7(b) & 7(c) praying that the following portion of para 5 of the OM dated 16th April, 1987 be declared as arbitrary, unreasonable and violative of Article 14 of the Constitution of India, "Additional pension becoming due under these provisions will not however, be taken into account for computation of additional relief sanctioned in the proceeding paragraph nor will it qualify for additional commutation".

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It is also prayed that the OM dated 14th April, 1987 passed by the Government of India be declared as arbitrary, unreasonable and violative of Article 14 of the Constitution of India to the extent to which the provisions of the said OM have been made applicable to the Government servants who have retired on or after 1st January, 1986 and the same be directed to be made applicable to those Government servants who have retired before 1st January, 1986. It is also prayed by him that the action on the part of the department denying the benefit of additional pension becoming due being Rs. 117/- on account of abolition of slab system while calculating the amount of additional relief as contemplated under para 4.1(c)(b) of OM dated 16th April, 1987 be declared as arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

4. The applicant, Kantilal Ishwarbhai Thakkar of O.A. 101/88 retired on 3rd September, 1985. The Accounts Officer fixed monthly pension of this applicant at Rs. 1630/-. He has received the commuted value of pension and gratuity. According to him, the emoluments fixed on the date of retirement were at consumer price index 568. On 25th June 1987, the pension was revised with effect from 1st January, 1986 consisting of existing pension Rs. 1630/- plus existing dearness relief upto

C.P.I. 608 points Rs. 63/- which makes a total of Rs. 1693/-. On 24th July, 1987 the Accountant General revised the pension raising it from Rs. 1693/- to Rs. 1945/-. It is alleged by him that the revised payscale at consumer price index at 608 points in respect of the post of Assistant Commissioner of Income Tax which the applicant held would be Rs. 3700- 135-4700-EB-150-5000 and he has prayed that his revised payscale should be fixed accordingly with effect from 3rd September, 1985 when he retired and that he is entitled to pension, commutation of pension and gratuity in the said revised payscales as would be payable to a Government employee who retired after 1st January, 1986 and his pension should be raised Rs. 2109 and also from Rs. 1945/- to such a figure that the same should be higher than that of J.P. Jani, i.e., applicant of O.A. 565/87.

5. The applicant G.K. Pandya of O.A. 102/88 retired on 31st December, 1985. The Accounts Officer by an order dated 3rd October, 1985 fixed his monthly value of pension at Rs. 1586/-. He received commuted/pension and gratuity also. According to him, on 24th July, 1987 the Accountant General revised his pension from Rs. 1586 to Rs. 1826/and then it was revised to Rs. 1889/- in which the increase in D.R.A. was granted as per Fourth Pay Commission report. He has alleged that the consumer price index, on 31st December, 1985 was 568/- and he should be given revised payscale

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with effect from 1st October, 1984 in the time scale of Rs. 3700-125-4700-EB-150-5000 and that he is also entitled to pension, commutation of pension and gratuity in the revised payscale as would be payable to Government employees who retired after 1st January, 1986.

6. The applicant, V.V. Mehta of O.A. 156/88 retired on 31st March, 1984 and the Accounts Officer by an order dated 2nd June, 1984 fixed his monthly pension at Rs. 989/-. He was paid the commuted value of pension and gratuity also. On 23rd July, 1987 the Accountant General revised his pension from Rs. 987/- to Rs. 1080/- on account of abolition of slab system and granted further increase of Rs. 91/- on receipt of Accountant General's letter and his revised pension was Rs. 1836/-. According to him, the revised payscale should be fixed of pay at consumer price index at 608 points. He has prayed that he is entitled to revised payscale in the time scale Rs. 3700-125-4700-EB-150-5000 and he is entitled to pension, commutation of pension and gratuity in the revised payscale as would be payable to Government employees who retired after 1st January, 1986.

7. The applicant of O.A. 221/88, Christie Saul Martin, retired on 30th November, 1984. His pension was fixed on 30th November, 1984 at Rs. 921/- and he has also received commuted value of pension and gratuity. On 16th July, 1987, his revised pension was increased from Rs. 921/- to Rs. 1566/- which included the

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dearness relief upto CPI 608 points and additional relief equal to the difference between existing fixed dearness relief of 463 and the notional relief calculated at 70% of existing pension. On 24th July, 1987, the Accountant General revised the pension raising it from Rs. 921/- to Rs. 995/- on account of abolition of slab system and granted further increase of Rs. 74/- and his revised pension was fixed at Rs. 1640/-. He has prayed that he should be given the revised payscale in the time scale of Rs. 3000-100-3500-125-4500 and that he is also entitled to pension, commutation of pension and gratuity in the revised payscale and corresponding dearness allowance and other allowances as would be payable to Government employees who retired after 1.1.1986. He is amended the O.A. by adding the relief at para 7(a), 7(b) and 7(c) & 7(d) in the identical terms in which the applicant of O.A. 565/87 as amended his O.A. by adding the relief clause & 7(a), 7(b), 7(c) & 7(d).

8. The applicant, Bhanuprasad Kanuga of O.A. 243/88 retired on 31st December, 1983. The Account Officer by an order dated 20th Jan. 1984 fixed his monthly pension at Rs. 877/- and the Accountant General revised his pension by an order dated 23rd July, 1987 from Rs. 877/- to Rs. 940/- on account of abolition of slab system and granted further increase of Rs. 63/- and on receipt of the Accountant General's letter, his pension was revised at Rs. 1554/-. He has prayed that he is entitled to revised payscale in the time scale of

Rs. 3000-100-3500-175-4500 and he is entitled to pension, commuted pension and gratuity in the revised payscale as would be payable to Government employees who retired after 1st January, 1986.

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9. The applicant of O.A. 244/88/ Smt. Indira Rameshchandra Bhatt, the widow of the retired Government servant, deceased Rameshchandra Bhatt, who expired on 27th May, 1986. This Government servant Rameshchandra Bhatt, retired on 30th June, 1984 and the Accounts Officer by an order dated 15th June, 1984 fixed his monthly pension at Rs.961/-. He was paid commuted value of pension and gratuity. On 23rd July, 1987 the Accountant General revised the pension raising it from Rs. 961/- to Rs. 1045/- on account of abolition of slab system and granted further increase of Rs. 84/- and on receipt of Accountant General's letter the revised pension was at Rs. 1365/-. The applicant has prayed that the revised payscale should be fixed in the time scale of Rs. 3000-100-3500-175-4500 and the pension, commuted pension and gratuity should be fixed in the revised payscale as would be payable to Government employee who retired after 1st January, 1986.

10. It is the case of the applicants that the Government of India set up the Fourth Central Pay Commission in July 1983 by Resolution dated 29th July, 1983, when the applicants were in actual service. Thereafter, the resolution dated 16th February, 1985

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amended the terms of reference as contained in Resolution dated 29th July, 1983 and included there in the recommendation as to interim relief taking into consideration, interim relief already sanctioned by Government O.M. dated 2nd August, 1983. Thereafter, by resolution dated 8th November, 1985 the Government further amended the terms of reference as contained in the resolution dated 29th July, 1983 as amended by resolution dated 16th February, 1985 and included the examination of the existing pension structure with a view to having a proper pension structure for pensioners, both past and future, including death-cum-retirement benefits and making recommendation thereon. It is the case of the applicants that the Fourth Central Pay Commission submitted Part-I of their report in June 1986 and Part-II of the report in December 1986. Then by Resolution dated 13th Sept. 1986, Government of India accepted the recommendations of the Fourth Central Pay Commission set up by resolution dated 29th July, 1983 which were submitted on 30th June, 1986 with certain improvements and the Government of India published a notification dated 13th September, 1986 by which the Central Civil Services (Revised Pay) Rules 1986 were made. The applicants of these applications are governed by the Central Civil Services (Pension) Rules, 1972 for pensionary benefits. The revised pay rules 1986 were deemed to have come in force on 1.1.1986. The revised

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pay rules did not apply to Government servants in Group 'A' service or holding Group 'A' posts. The Government of India published notification dated 13th March, 1987 by which the Central Civil Services (Revised) Pay Rules 1986 were revised and according to the applicants, the said revised pay rules were made applicable to Government servants in Group 'A' service or holding Group 'A' posts.

11. The Government of India issued OM dated 14th April, 1987 in respect of pensionary benefits payable to the Government servants who would retire on or after 1.1.1986 which is produced in O.A. 565/87 at Annexure A-1. The Government of India issued OM dated 16th April, 1987 in respect of pension payable to pre 1.1.1986 pensioners produced at Annexure A-2 in O.A. 565/87. The applicants of this O.A. 565/87 has also produced at Annexure A-3, OM dated 30th April 1985 regarding treatment of portion of additional dearness allowance as pay for the purpose of retirement benefits. The pension scheme was liberalised by this OM and it was decided that the entire additional dearness allowance and ad hoc dearness allowance sanctioned in the Finance Ministry's OM dated 19th January, 1985 linked to average index level 568 should be treated as dearness pay in addition to the dearness pay vide Finance Ministry's OM dated 25th May, 1979 amended vide OM dated 30th December, 1981 for the purpose of retirement benefits in respect of Government

servants who retire on or after March 1985 to the extent specified in the OM. Para 3(i) of the OM laid down that D.P. indicated above shall count as emoluments for pension and gratuity in terms of Rule 33 of the Central Services (Pension) Rules, 1972. Para 5 of the said OM also refers to another OM dated 29th April, 1985 by which ceiling on maximum amount on gratuity was raised from Rs. 36,000/- to Rs. 50,000/-. The ceiling is now raised to Rs. 1,00,000/- from 1.1.1986.

12. The case of the applicants is that the Central Civil Services (Revised Pay) Rules 1986 which were passed on 13th September, 1986 and amended on 13th March, 1987 were deemed to be effective from 1.1.1986 made two artificial and arbitrary classifications of Central Government employees who were in Government Service on 29th July, 1983 being the date of appointment of Fourth Central Pay Commission into those employees who retired before 1.1.1986 and those who retired or would retire after 1.1.1986 and thereby the first category of employees retiring from service between 29th July, 1983 and 31st December, 1985 were denied the benefit of revised pay scales and as such they were accorded discriminating treatment which is violative of Articles 14 & 16 of the Constitution of India and as such Rule (2) of the Central Civil Services (Revised Rules) 1986 is unconstitutional and ultra vires and as such it deserves to be struck down. It is also alleged that the employees who either retired before

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1.1.1986 or after 1.1.1986 formed one homogeneous class of pensioners and they all are entitled to equality as enshrined in Articles 14 & 16 of the Constitution of India even assuming without admitting that the Union Government is competent to fix a particular date for implementation of revised pay scale.

13. The respondents have filed reply which are almost identical in all matters. It is contended that the application is barred by limitation. It is contended that all the pensionary and retirement benefits were granted to the applicants in accordance with law and that there is no discrimination as alleged. It is contended that cut off date of 1.1.1986 cannot be considered as arbitrary or discriminatory. It is contended that the commission specifically recommended to the Government effect to its recommendation on retirement benefits from 1.4.1986 which was modified by the Government to 1.1.1986. The respondents have denied that Government effect from 1.1.1986 is violated under Article 14 or 16 of the Constitution of India as alleged. It is contended that the said date cannot be applied retrospectively to those who retired prior to relating to revised scales of pay. It is contended that the pension is based on the emoluments drawn during relevant period preceding retirement and the length of qualifying service and the benefit of notional pay in the revised scales introduced after their retirement, which the applicants never drew cannot be allowed in their case and hence

scale of
the applicants' claim for revised pay and for basing
their retirement benefits on the revised scales of pay
are not tenable. It is contended that any revision
of pension benefits always takes effect from a
specified date. It is contended that the benefit of
the revised pension formula in calculating on pension
at the rate of 25% of it introduced from 1.1.1986
has already been afforded to the concerned applicants
and additional relief as accumulated by the Fourth
Central Pay Commission has also been provided to the
applicants. The respondents have contended that the
applicants' claim for revised gratuity is not
accepted. It is contended that the death-cum-retire-
ment gratuity being a one time lump sum payments is
not subject to upward revision on account of subsequent
changes in ceilings etc. It is contended that the
cut off date is a policy decision and no ground of
malafide or discrimination is made out by the
applicants and therefore the Tribunal should not
change or alter the policy decision taken by the
Government of India.

14. The respondents have also filed reply to the
amended O.A. 565/87. In reply to amended O.A. 565/87,
the respondents have contended that the applicant
retired from service with effect from 30th September,
1984 and his pension was originally fixed at Rs.1096/-
according to the then prevailing pension rules. The
Government of India rationalised the pension
structure for

pre 1.1.86 pensioners vide OM dated 16th April, 1987 and hence the pension of the applicant was revised to Rs.1864/-.. Further according to para 5 of the said OM, his pension was re-calculated at 50% of average emoluments and the amount of pension was finally fixed at Rs.2081/- and he was authorised an additional amount of Rs.117/- being the difference between the amount worked out on the basis of old slab formula and the amount worked out on the revised calculation at 50% of average emoluments. It is contended that the applicants' request that additional pension due to him vide para 5 of the above OM should be taken into account for computation of additional relief mentioned vide para 4(i)(c)(b) cannot be granted. It is contended that the principle enunciated in para 5 of the aforesaid OM is a policy matter of the Government of India and no question of discrimination or arbitrariness arises.

15. The applicant of O.A.565/87 and applicant of OA 156/88 have filed rejoinder controverting the contentions taken by the respondents in the reply.

16. The learned advocate Mr.Vyas for the applicant of O.A.565/87 has argued the case at length. The other applicants in the other matters were also heard. The applicant of OA 565/87 has filed written submissions which are adopted by the other applicants except the applicant of OA 221/88 who has filed separate submissions. The respondents' learned advocate Mr. Bhatt is also heard. Respondents have also filed written submissions.

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17. The first contention of the respondents is that these applications are barred by limitation. The applicants have submitted that since the provisions of OM dated 14th April, 1987 issued by the Government of India are under challenge and the provisions of Central Civil Services (Revised Pay) Rules 1986 are also challenged and when the question of retiral benefits are to be considered which is a recurrent cause of action the applications are not barred by limitation under the Administrative Tribunals Act, 1985. These matters have been already admitted before about 3 years. Moreover, the question involved is about the pensionary benefits to the applicants. There is no substance in the contention of the respondents that the applications are barred by limitation under the Administrative Tribunals Act, 1985 and hence the same is rejected.

18. The applicants have submitted that they challenge the validity of the provisions of Central Civil Services (Revision of Pay) Rules 1986 inasmuch as they have been applied to only those Government servants who have retired after 1.1.1986. The applicants have also challenged the legality and validity of OM dated 14th April, 1987 by which certain pensionary benefits have been conferred upon the Government servants who have retired after 1.1.1986. The applicants have

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also challenged the action on the part of the department denying the benefit of additional pension which will become due to the applicant on account of the abolition of the slab system contemplated under the provision of Rule 4.1(c)(b). It is submitted on behalf of the applicants that the cut off date 1.1.1986 fixed by the Government for the implementation of the provisions of the Central Civil Services (Revision of Pay) Rules 1986 is totally arbitrary, erroneous and discriminatory inasmuch as the fixation of said cut off date has no nexus with the objects sought to be achieved by the provisions of CCS(ROP) Rules, 1986 and the reliance is placed on the decision in D.S. Nakara's case reported in 1983 SC, p. 130 .It is therefore, submitted that the said cut off date fixed by the Government is required to be declared as bad and violative of Article 14 of the Constitution inasmuch as discrimination is created between two class of pensioners i.e., Government servants who have retired before 1.1.1986 and the Government servants who have retired after 1.1.1986. It is submitted that the benefits of the provisions of Central Civil Service (ROP) Rules, 1986/required to be conferred upon the Government employees who have retired before 1.1.1986.

19. It is further submitted on behalf of the applicants that the action of the Government for fixing the cut off date 1.1.1986 for implementation of the

provisions of the Central Civil Services (Revision of Pay) Rules, 1986 and the provisions of the OM dated 14th April, 1987 is thoroughly arbitrary, erroneous bad and illegal inasmuch as for the fixation of the ^{it} said cut off date i.e. 1.1.1986/has no nexus with the objects to be achieved by the said rules as well as the office memorandum. According to the applicants, the Fourth Central Pay Commission submitted Part-I of its report relating to structure of emoluments etc. on 30th June, 1986 and it recommended benefit from 1st April, 1986 but the Government changed the date and made it applicable from 1.1.1986. It is submitted that the fixation of the cut off date is also not supported by any rational principles and as such the cut off date does not satisfy the twin test of reasonable classification. The learned advocate for the applicants submitted that the relevant date for the proper implementation of the said Rules as well as the office memorandum is the month of July 1983 in which the Fourth Pay Commission was set up by the Government for the revision of pay structure of all Central Government servants. It is submitted that after taking into consideration the pay structure of the Government servant at the relevant point of time, it was decided by the Government to confer more benefits by revising the pay structure of the Government servants. It is submitted that it was intended by the Government servant to confer more benefits by way of revision

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of pay scale of those Government servants who were in service at the relevant time and as such for the very season that the Fourth Pay Commission was set up in the month of July 1983 with a view to effect the proper revision in the pay structure of all the Government servants, but the Fourth Pay Commission took a very long time in submitting its report to the Government inasmuch as that the report was submitted by the Commission in the month of September 1986 and by that time various Government servants have retired from service. The learned advocate for the applicant submitted that merely on account of delay on the part of the Fourth Pay Commission in submitting its report, the Government servants who have retired before 1.1.1986 should not be compelled to suffer by denying the benefits of revision of pay as well as certain pensionary benefits and hence it is submitted that the said rules as well as the OM dated 14th April 1987 require to be declared bad, illegal and violative of Article 14 of the Constitution. It is further submitted that when the report was submitted by the Fourth Pay Commission in September 1986 many Government servants who were in service at the time of setting up of the Fourth Pay Commission had retired and had become part of homogeneous class of pensioners as on 30th September, 1986, but the Government showered favour on some of them by pushing cut off date backward from 1st April, 1986 to 1st January, 1986.

20. The learned advocate for the applicant and the applicants of other O.As have submitted that the fixation of cut off date 1.1.1986 has created discrimination amongst Government servant who have retired before 1.1.1986 and the Government servant who have retired after 1.1.1986 but before September 1986 and the action of the Government in choosing the cut off date 1.1.1986 is arbitrary and discriminatory and hence the same requires to be declared as illegal, bad and violative of Article 14 of the Constitution of India. It is further submitted that in reality the cut off date for the implementation and enforcement of the revised pay Rules as well as the office memorandum dated 14th April, 1987 should have been fixed by the Government as July 1983 the month in which the Fourth Pay Commission was set up and as such the benefit of the said rules as well as the office memorandum required to be conferred upon the pensioners after considering the month in which the Fourth Pay Commission was set up.

21. The learned advocate for the applicant in O.A. 565/87 submitted that after retirement ^{all} Government servants belong to the same class and no discrimination can be made only on the ground of retirement date and equal pay for equal work principles should be applied. He submitted that atleast the retirees before 1.1.1986 should be given the same benefits to persons who retired after 1.1.1986 from the date of 1st January,

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1986. He submitted that how the additional benefit can be cut off as mentioned in OM dated 16th April, 1987. He submitted that all the benefits mentioned in OM dated 16th April, 1987 are given to the applicant except the benefit as mentioned in Ann. A/2 para 4.1 (c) (b). He also submitted that by decision in the case of Rameshchandra Gupta V/s. Union of India reported in 1987 G.L.H. p.118, the pensionary benefits conferred on Government servants retiring on March 31, 1985 in respect of inclusion of entire additional D.A. and ad hoc D.A. were extended to all pensioners retiring before 31st March, 1985 and the gratuity benefit thereon as also benefit of ceiling of Rs. 50,000/- of gratuity were also made available to pensioners retiring before 31st March, 1985. He submitted that Rameshchandra Gupta retired on 30th September, 1984 as Chief Commissioner of Income Tax and the applicant of O.A. 565/87 also retired on 30th September, 1984 as Assistant Income Tax Commissioner, but the applicant is denied the benefit of additional D.A. and ad hoc D.A. for the purpose of pension and higher ceiling of gratuity. He has also relied on the decision in Ratilal H. Patel V/s. State, reported in 24(1) G.L.R.p.701 on the same point.

22. The applicant of O.A. 565/87 has produced at Annexure A-3, OM of the Government of India, Ministry of Defence, Department of Expenditure, New Delhi, OM No. F 1 (12)-EV/84 dated 30th April, 1985 on the subject of treatment of portion of addition dearness allowance as

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pay for the purpose of retirement benefits. It is submitted that by this OM the pension scheme was liberalised and it was decided that the entire additional D.A. and ad hoc D.A. sanctioned in the Defence Ministry's OM dated 19th January, 1985 linked to average index level 568 should be treated as dearness pay in addition to the dearness pay vide Ministry's OM dated May 25, 1979 amended vide OM dated 30th December, 1981 for the purpose of retirement benefits in respect of Government servants who retired on or after 31st March, 1985 to the extent specified in the OM. Para 3(i) of the OM laid down that the dearness pay indicated above shall count as emoluments for pension and gratuity in terms of Rule 33 of the Central Civil Services (Pension) Rules, 1972 and para-5 refers to another OM dated 29th April, 1985 by which ceiling on maximum amount on gratuity ^{was} raised from Rs. 36,000/- to Rs. 50,000/-. It is submitted that the benefits which had been given in the decision in Rameshchandra Gupta's case (supra) should be given to the applicant. The learned advocate for the applicant submitted that the applicant has been given all the other benefits as mentioned in OM dated 16th April, 1987 except Annexure A-2 / the benefit mentioned in para-4 point 1(c)(b) of the said memo that in the case of pensioners drawing pension above Rs.500 additional relief shall be equal to the difference between the existing fixed dearness relief of Rs. 463 and the notional relief

calculated at 70% of existing pension as defined in para 3.1(b) subject to the condition that where the said difference shows negative amount or is less than Rs. 100, the additional relief shall be Rs. 100/-.

He submitted that the action on the part of the respondents denying the benefit of additional pension becoming due being 117 on account of abolition of slab system while calculating the amount of additional benefit as contemplated under the provision of Rule 4.1(c)(b) is violative of Article 14 of the Constitution of India. He submitted that the department should have also counted the additional pension becoming due to the applicant being Rs. 117/- on account of the abolition of the slab system. He submitted that the reply of the Central Board of Direct Tax dated 28th August, 1989 to the applicant which is produced at Annexure A-6 collectively that the additional amount of pension of Rs. 117/- per month is to be kept separate at the time of arriving at the revised pension admissible with effect from 1.1.86 as per table, annexed to notification dated 16th April, 1987 and the said additional pension of Rs.117/- is not to be taken into account for computation of additional relief etc. vide para 5 of order dated 16th April, 1987 is erroneous. He submitted that therefore, the said portion of OM dated 16th April, 1987 should be held violative of Article 14 of the Constitution of India and the OM dated 14th April, 1987

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regarding pensionary benefits to Government servants who retired on or after 1.1.1986 also should be held as arbitrary and violative of Article 14 of the Constitution of India and the provision of the said OM have been made applicable to the Government servant who have retired on or about 1st January, 1986. He submitted that the same should have been made applicable to the Government servant who has also retired from 1.1.1986.

23. The other applicants have adopted the arguments advanced by the learned advocate for the applicant of O.A. 565/87 and they have also adopted the written submissions filed by the applicant of O.A. 221/88 of this O.A. Except the applicant of O.A. 221/88 who has filed separate written submissions.

24. The applicant of O.A. 221/88 has submitted that the ratio laid down in Rameshchandra Gupta's case (supra) and in case of P.I. Patel V/s. Union of India in O.A. 82/86 decided by this Tribunal on 27th October, 1986 should be followed. He also submitted that he has furnished to this Tribunal two alternative calculations based on Consumer Price Index 568 and 608 in connection with the theory of fitments evolved by the Hon'ble Supreme Court in para 46 in the judgment in the case of Nakara. He submitted that the question of interpretation of theory of fitments was not involved either in the case of Nakara or in Dave's case and therefore the same should be interpreted in this case shown at page 24 & 25 of his application. He has claimed

pensionary benefits on revised payscale at Consumer Price Index 608 points. He submitted that the denial of arrears of Nakara's case vide paragraph 60 of the judgment was based on the special facts of the case. The applicant further submits that the discussion about the retroactivity of Government's financial implications of relief to existing pensioners and about the budget provision discussed in Nakara's decision would not apply to his case. It is mentioned in his exhaustive written submissions that the question of respondents fixing a date antecedent to that fixed by the Pay Commission was not involved in Nakara's case. He submitted in the alternative that all the Income Tax Officers mentioned in the notification No.1 Income Tax Establishment dated 31st January, 1976 Annexure D to the application be adopted as a homogeneous class irrespective of whether they retired before or after 1st January, 1986.

25. The respondents have also filed written submissions wherein they have also referred to several paragraphs of judgments in Nakara's case. According to the respondents, the benefit of the revised pension formula in calculating of pension at the rate of 25% introduced

from 1.1.1986 has already been afforded to the applicants from that date and additional relief as accumulated by the Fourth Central Pay Commission has also been provided to them but contended that the applicants' claim for revised gratuity cannot be accepted. They have also relied on the decision given by this Tribunal in the case of Prahlad Venibhai Dave & Ors. V/s. Union of India & Ors. (O.A.Nos.170/88, 206/88 & 271/88 decided on 30th October, 1991).

According to the respondents, this decision covers the issue relating the revised pay scale, revised pension and additional gratuity. It is contended in the written submissions that in view of several judgments of the Hon'ble Supreme Court as mentioned in the written statement page 6 of the respondents filed earlier it has been clearly laid down that death-cum-retirement gratuity being a one time lumpsum payment is not subject to upward revision on account of subsequent changes in ceilings etc. It is also mentioned in the submissions that the case of one R.R. Shah sought to be compared by the applicant of O.A. 565/87 in the written submissions is a vain attempt because the applicant retired on 30th September, 1984 whereas R.R. Shah retired on 20th February, 1986 i.e. after 1.1.1986 and therefore there is no question of comparing the applicant's case to that of R.R. Shah. It is also the contention of the respondents that the Government of India liberalised / pension structure for

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pre 1.1.1986 pensioners vide OM dated 16th April, 1987 and according to para 4.1(c)(b) of the said OM, pension has been revised and further according to para 5 of the said OM the pension is recalculated at 50% of average emoluments and additional pension has been given to the applicants being the difference between the amount worked out on the basis of the old slab formula and the amount of revised calculation at 50% of average emoluments. It is submitted that the applicant cannot challenge that OM being arbitrary or discriminatory and can not demand that additional pension due to the applicant vide para 5 of the said OM should be taken into account for computation of additional relief sanctioned vide para 4.1(c)(b) and it is a policy matter of the Government of India. It is submitted that the applicant though has prayed the relief in amended para 7(a), 7(b), 7(c) in O.A. 565/87 and in O.A. 221/88, it is only differently worded, but it is in effect the challenge to the cut off date 1.1.1986 but the said point is also considered and decided by this Tribunal in earlier judgment. It is therefore, submitted that the applications may dismissed.

26. The Division Bench of this Tribunal consisting of Administrative Member Mr. M.M. Singh and myself (R.C.Bhatt, Judicial Member) have decided the identical matters filed by similar officers and also the Central Government Pensioners Association (Gujarat) Ahmedabad in case of Prahlad Venibhai Dave & Ors. v/s. Union of

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India & Ors. in O.A.Nos. 180/88, 206/88 & 271/88

decided on 30th October, 1991. The OM dated 30th April, 1985, OM dated 14th April, 1987 and OM dated 16th April 1987 which are under challenge before us were produced in those cases and we have considered those O.Ms also. We have dealt with all the submissions made in those matters which are almost identical in this case and we have referred to the decision in Nakara's case also at length. We have dismissed those applications and have rejected the reliefs prayed in those applications which are almost the same reliefs in this cases also except the relief in amended para 7(a), 7(b) & 7(c) in two O.As.

27. The reliefs claimed ⁱⁿ this group of O.As are based mainly on the decision in Nakara's case. The real point for decision, therefore, is whether the reliefs claimed in these applications flow as a necessary corollary to the decision in Nakara and the applicants can succeed only if this assumption by them is correct. The question for decision in Nakara was whether the date of retirement is a relevant consideration for eligibility when a liberalised pension formula for computation of pension is introduced and made effective from a specified date resulting in denial of the benefits of liberalised pension formula to pensioners who have retired prior to the retired date. It was also observed in para 46, 48 & 49 of the said judgments that only the pension

had to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. It was observed that it was not a new scheme, but only a revision of existing scheme. It was not a new retiral benefit but it was an upward revision of an existing benefit. It was observed that if it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. More over it was observed that the arrears were not required to be made because to that extent the scheme was prospective. The revised scheme was operative from the date mentioned in the scheme and no arrears were payable. This decision came up for consideration before another Constitutional Bench of the Hon'ble Supreme Court in Krishna Kumar V/s. Union of India (1990) 4 SCC p. 207, which is also referred to in our judgment. Again, the same judgment was considered at length recently by the Hon'ble Supreme Court of India in Indian Ex-service League V/s. Union of India, 1991 SCC (L&S) 536 in which it is held that the decision in Nakara's case is one of the limited application. It was held that gratuity having already been paid on the basis of salary drawn on the date of retirement, the transaction was completed and closed and could not be reopened as a result of enhancement made at later date for person retiring subsequently.

The Hon'ble Supreme Court has followed the decision on this point in the case of State Government Pensioners Association v/s. State of A.P. (1986 SCC (L&S) 676). Now I proceed to consider the case of the applicants in the light of all these decision.

28. The first contention of the applicants regarding 29th July, 1983 the date of notification setting up the commission to be held as the date of implementation of the recommendation instead of date 1.1.1986 and the contention that not implementing the recommendations from 29th July, 1983 resulted in arbitrary and artificial classifications of homogeneous class of employees in service on 29th July, 1983 into two classes namely one class consisting of those who retired on 1.1.1986 and other employees who retired before 1.1.1986 was rejected by us after giving detailed reasoning in our decision in O.A. 170/88 & Ors. decided on 30th October, 1991. The notification had not been produced in those cases but in these cases even if these notifications are considered, the question is whether the date cannot be extended or whether the last date contained in the notification for completion of the work of the commission and submission of report to Government is enforceable from 29th July, 1983 as submitted by the applicants. It was submitted that the applicants are not responsible for the delay the

commission made in the submission of the report and it was submitted that those who retired before 1.1.1986 this should not suffer. We have rejected this contention also in para 7 of our judgment. We have also observed that the prerogative decision is not liable to intervention in the sense that this Tribunal has no jurisdiction and authority in such a matter to direct the Government to take a particular decision and to apply it from a specified date. Such notification normally does not contain undertaking or promise of the Government to accept the report as and when submitted and, that too, from the date of the notification by which the Commission came to be set up. Therefore, the date of the notification to set up a Commission does not ipso facto legally become the date of the recommendations of the Commission. Therefore, for the same reasons as mentioned in our previous judgment, this contention in this group of application is also rejected. More over no such view is contained in Nakara's case also.

29. The learned advocate for the applicants submitted that the Central Civil Services (Revised Pay) Rules, 1986 which were passed on 13th September, 1986 and amended on 13th March, 1987 were deemed to be effective from 1st January, 1986 made two artificial and arbitrary classifications of Central Government employees who were in Government service on 29th July, 1983 being the date of appointment of Fourth Central Pay Commission into

those employees who retired before 1.1.1986 and those who retired or would retire after 1.1.1986 and thereby the first category of employees retiring from service between 29th July, 1983 and 31st December, 1985 were denied the benefit of revised pay scales and as such they were accorded discriminating treatment which is violative of Articles 14 & 16 of the Constitution of India and as such Rule 1(2) of the Central Civil Services (Revised Rules) 1986 is unconstitutional and ultra vires and as such it deserves to be struck down. In the alternative, it is submitted that even if the Union Government is competent to fix the particular date for implementation of revised pay scales the employees either retired before 1.1.1986 or after 1.1.1986 one homogeneous class of pensioners and are entitled to equality as enshrined under Articles 14 & 16 of the Constitution and that they are entitled to equal pension in terms of revised pay scales from 1.1.1986. It is submitted that the OM of Central Government, Annexure A-2 dated 16th April, 1987 denies this equality and parity and hence violative of Articles 14 & 16 of the Constitution and hence it is arbitrary and deserves to be quashed and set aside. We have dealt with these submissions also in our previous judgment, while discussing the question as to whether the applicants are able to show that the homogeneous class existing on 1.1.1986 came to be broken. We have observed that this date cannot be

advanced to 29th July, 1983 as the date to figure out the existence of a homogenous class as argued for the applicants. The judgment in Nakara's case contains no suggestion or direction to advance dates in order to maintain the claim of a homogenous class on that date. We have also observed in that judgment that the facts and directions in Nakara's case do not include revision of the pay scales of the retirees in the same manner as of those in service for recalculation of their pension in accordance with the revised formula. The applicants want to extend the theory of classification in the Nakara's case to cover their case. The question, therefore, arises whether Nakara's case bars further classification. This question has been answered by the Hon'ble Supreme Court in the case of Krishen Kumar V/s. Union of India, 1991 SCC (L&S) 112 which was decided by the Bench of Five Hon'ble Judges of the Supreme Court. We have quoted para 33 of the judgment from that decision. It was pointed out that in Nakara's case it was never required/ decided that all the retirees formed a class and no further classification was permissible. So far twin test of classification as mentioned in para 15 of Nakara's judgment is concerned, it says that if these tests are satisfied, further classification even of the have retirees will be permissible. But the applicants/first to establish that what they have visualised is a valid homogenous group because it is only if they satisfy the Tribunal about this foundational issue, it will be

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necessary to go into the issues of further classification and whether the same is permissible.

We have discussed ^{it} in details in para 9 of our judgment. We have observed in the previous judgement para-9 " Obligation of the Government to pay pension begins only when a Government Servant retires. A Government servant retires on the pay in the payscale to which he is entitled. The ratio decidendi in Nakara's case creates no obligation on grounds of belonging to one group that every time payscales are revised - and such revision compulsorily involves higher pensionary benefits on higher payscale on existing rules of calculation of pensionary benefits for future retirees - the payscales of those who have already retired should also be revised for recalculation of their pensionary benefits and future pension and arrears to be paid on that basis. Looking at the same thing in another way, every recipient of pension was once a recipient of salary and every recipient of salary would ripen into a pensioner when he retires. Therefore those still in service but destined to receive pension on their retirement form their own which leaves out retirees. For the latter their past services stand already rendered. For the former their present service is on. The former therefore do not convert to the latter and vice versa. The property of being in service distinguishes those in

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service from the retirees as for the latter this property exhausted itself with their retirement."

We have also observed in the same para-9 of our judgment that the differences in objectives with regard to those in service and the retirees necessarily arise from the properties of the two, the one serving and the other retired. For the latter, provision of dearness allowance on pension linked to the cost of living already made is expected to mitigate hardship on account of risen and rising cost of living. We therefore, held that there is no understandable rational reason for the contention that the two form a homogenous group and for the demand that the pay-scales on which the retirees retired should be revised every time and same is revised for those in service so that the pensionary benefits of the retirees can be recalculated on the basis of the revised pay-scales of the posts they formerly held and from which they retired. We therefore, held that the applicants' assertion that the retirees and those in service but to retire, i.e., the future retirees form a homogenous group which is broken by cut off date 1.1.1986 has no basis. We hold that the cut off date 1.1.1986 did not disturb that position of the exclusive groups namely, the retirees and those in service on 1.1.1986. For the reasons mentioned in the previous judgment given by the Division Bench of this Tribunal the submissions made on behalf of the applicants that I reject / two artificial and arbitrary classifications

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of Central Government employees were made by the Central Civil Services (Revised pay) Rules which were passed on 13th November, 1986 and amended on 13th March, 1986 and I am also not satisfied that the same accorded discriminating treatment as alleged. The OM therefore, dated 14th April, 1987 produced at Annexure A/1 by the applicants in all the cases, is not arbitrary, unreasonable or violative of Articles 14 of the Constitution, nor the Central Civil Services (Revised Pay) Rules as amended are violative of Article 14 or Article 16 of the Constitution of India.

30. The amount of pension is one time calculation made and there is no substance in the submissions of the applicants that those who retired prior to 1.1.86 are entitled to revised pension on the basis of revised pay scales as would be payable to Government employees who retired after 1.1.1986. The submissions that the benefits of the provisions of Central Civil Services (ROP) Rules, 1986 require to be conferred upon the Government servants who have retired before 1.1.1986 are also rejected. The submissions made by the applicant in O.A.221/88 that having regard to the judgment of the Supreme Court in the case of D.S.Nakara effective from the specific date i.e., 1.1.1986, the pension of the applicant has to be computed and paid on the analogy of fitments in the revised pay scales cannot be accepted. The applicant of O.A.221/88 has furnished to alternative calculations based on Consumer Price Index 560 and 608 in connection with the theory of fitment evolved by the Hon'ble Supreme Court in

para 46 of the judgment in the case of Nakara. In my opinion, that theory does not apply in the present case because I hold that the cut off date 1.1.1986 does not disturb the position of two exclusive groups between the applicants and those who retire after 1.1.1986. The submissions made by the applicants in this group on the point that the OM dated 16th April, 1987 rationalised pension structure of pre 1.1.1986 pensioners on the recommendation of the Fourth Pay Commission gives discriminatory treatment to pensioners who retired prior to 1.1.1986 as conferred to those who retired thereafter are also rejected and hence the applicants reliefs for the revised pay scales and revised pension and commutation of pension is also rejected.

31. Giving effect of Fourth Pay Commission recommendation from 1.1.1986 does not violate Articles 14 & 16 of the Constitution as submitted by the applicants. Improvements in pay scales by a very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Therefore, those who were in employment prior to 1.1.1986 and who retired before that date on the basis of the then prevailing cost of living structure and payscale structure cannot invoke Article 14 in order to claim the revised pay scale brought into force by the recommendation of Fourth Pay Commission and applied to employees who retire on 1.1.1986 or thereafter. In this view of the

matter the OM dated 14th April, 1987 by which the revised provisions are made applicable to Government servants who retired on or after 1.1.1986 does not suffer from the vice of arbitrariness or discrimination under Article 14 & 16 of the Constitution of India and the principles enunciated in Nakara's case does not apply in this cases and hence the prayer of the applicants to declare the OM dated 14th April, 1987, Ann. A/ as arbitrary, unreasonable or violative of Article 14 of the Constitution of India to the extent to which the provisions of the said OM have been made applicable to the Government servants who have retired on or after 1.1.1986 is rejected. / the provision of the said OM cannot be made applicable to those Government servants who have retired before 1.1.1986

and they are also not entitled to pension or commutation of pension and gratuity in the revised pay scales as would be payable to Government servants who retired after 1.1.1986 for the reasons which are narrated above and also as ^{per} our decision in the previous matter.

32. The applicants have also in their submissions stated that the action of the respondents denying the benefit of liberalised pension scheme as announced by the OM dated 30th April, 1985 is also bad and illegal and the reliance is placed on the decision in the case of Rameshchandra Gupta V/s. Union of India & Ors..

1987 GLH, p.118 and in the case of Ratilal Hiralal Patel v/s. State, 24(1) GLR, p.701. These are the two judgments of the Single Judge of the High Court of Gujarat but we have in our previous judgment rejected the claim of the applicants and therefore, it is not necessary to repeat the same reasoning again. The case of the applicants is that the Government servants who have retired before 30th April, 1985 are also entitled to the benefits of liberalised pension scheme as declared by the said circular. The reliance was also placed on the decision in case of P.I. Patel v/s. Union of India & Ors., decided by the Ahmedabad Bench of the C.A.T. in O.A. No. 82/86 decided on 27th October, 1986. The respondents in that case did not contest the application at all and the matter proceeded ex parte, therefore, that cannot be considered as the decision bi- parte. The decision in Rameshchandra Gupta's case (supra) & Ors. relied on by the applicants related to discrimination violating Article 14 of the Constitution of India but as held in our previous decision in O.A. 170/88 & Ors. decided on 30th October, 1991, we have considered the decision of the Hon'ble Supreme Court in the case of D.S. Nakara and then we have rejected the claim of the applicants. The decision in Krishena Kumar v/s. Union of India (Supra) was also considered in the previous judgment by this Tribunal. In the case of Action Committee South Eastern Railway

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SCC (L&S) 222 again the Hon'ble Supreme Court had the occasion to consider the case of D.S. Nakara. In that case, the petitioners, at the time of their retirement, were given option to get their pension and gratuity calculated after merger of dearness pay or to get the amount without merger of dearness pay but with graded relief and the petitioners in that case opted for first alternative. The Railway Board, vide its order dated 17th May, 1985 decided that the entire dearness and ad hoc dearness allowance allowance in addition to dearness pay be treated as part of the pay for the purpose of calculating pension and other retirement benefits in respect of railway employees who retired on or after 31st March, 1985 and the petitioners in that case were not entitled to benefit of these instructions as they retired prior to this date. It was held that the petitioners were getting dearness allowance in addition to their pension on account of price index level going high and the petitioners cannot claim any right that their entire dearness allowance should also be merged as was held that mere dearness pay. It is fact that there would be substantial increase in their gratuity and commuted value of pension could not be ground for extending instructions dated 17th May, 1985 to them and no such claim could be allowed to them on principles of a equality because petitioners formed class different from those who were in service as on 31st March, 1985.

and therefore there was no question of discrimination and it was held that the ratio desidendi Nakara's case would not apply. The amount of pension, is according to the present rules, one time calculation made. The monthly average of the salary of ten last months in service reduced to half gives the amount of pension [redacted]

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and only when the basis of calculation of pension comes to be revised the benefit of which revision if not given to the applicants, then they may have grievance, which may be redressed as was one in Nakara's case. In our previous judgment, it is held that every recipient of pension was once a recipient of salary and every recipient of salary would ripen into a pensioner when he retires. Therefore, those still in service but destined to receive pension on their retirement form their own which leaves out retirees. For the latter their past services stand already rendered. For the former, their present service is on. The former therefore do not convert to the latter and vice versa. The cut off date 1.1.86 does not disturb the position of two exclusive groups. In one recent judgment in the case of Indian Ex-Services League and Ors. V/s. Union of India, reported in 1991 SCC (L&S), 536, it is held that the Court's decision in Nakara case has to be read as one of limited application and its ambit cannot be

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enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different. One of the prayers made in that case was for grant of same death-cum-retirement gratuity of pre April 1st, 1979 retirees as to 1st April, 1979 retirees. A similar claim was rejected by the Hon'ble Supreme Court in State Government Pensioners' Association V/s. State of A.P. (1986) 3 SCC 501 : 1986 SCC (L&S) 676 on the ground that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid on that footing the transaction was completed and closed. It could then ^{not} be reopened as a result of enhancement made at a later date for persons retiring subsequently. This concept of gratuity being different from pension has also been reiterated by the Hon'ble Supreme Court in Krishna Kumar case (supra). Another claim was also made in Indian Ex-Services League & Ors. matter which was for merger of D.A. backwards. It was held that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement, and, therefore, it was held that there was no ground to include D.A. at a time when it was not paid and the

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same claim was held untenable. Therefore, considering all these decisions the applicants' prayer 7(a) be declared the portion of para-5 as on OM dated 16th April, 1987 as arbitrary, unreasonable and and prayer 7(a) violative of Article 14 of the Constitution of India / cannot be upheld and the same deserve to be rejected.

33. Now I ~~am~~ proceed to examine rest of the grievances of the applicants in the respective applications. The applicant of O.A. 565/87 retired with effect from 30th September, 1984, his pension was originally fixed at Rs. 1096/- according to then prevailing pension rules (the slabs formula). The Government of India rationalised the pension structure for pre 1.1.1986 pensioners vide their OM dated 16th April, 1987, Annexure A-2. According to para 4.1(c)(b) of the said OM, pension of the applicant was revised from Rs. 1096/- to Rs. 1964/-. The respondents in reply to the amended O.A. have contended that according to para 5 of the said OM his pension was recalculated at 50% of average emoluments and the amount of pension was finally fixed at Rs. 2081/-. The respondents have contended that accordingly the applicant was authorised an additional amount of Rs. 117/- being the difference between the amount worked out on the basis of the old slabs formula and the amount worked out on revised calculation at 50% of average emoluments. The Government of India has stated in the OM dated 16th April, 1987 that the additional

pension becoming due under the provisions of para 5 of the said OM will not be taken into account for computation of the additional relief sanctioned vide para 4.1(c)(b) thereof. The respondents have revised the applicants' pension strictly according to the recommendations of the Fourth Central Pay Commission as per the above OM. Annexure A-5 produced by the applicant shows that it was according to that OM dated 16th April, 1987 that the amount of Rs. 117/- was given as a difference between the revised and pre revised pension. The applicant vide his letter dated 29th May, 1989, Annexure A-6, sought explanation from the Zonal Accounts Officer, CBDT on that point and the reply was given by the respondents on 29th June, 1989 that the revised pension would be Rs. 1981 and not Rs. 2063/-. Again the applicant wrote a letter dated 6th July, 1987 to the Chief Controller of Accounts to which the reply was that the additional pension of Rs. 117/- per month was not be taken into account for commutation of additional relief etc. vide para 5 of order dated 16th April, 1987. The case of the applicant is that the denial of the benefit of additional pension becoming due being Rs.117/- on account of abolition of slab system while calculating the amount of additional relief as contemplated under para 4.1(c)(b) of OM dated 16th April, 1987 is arbitrary, unreasonable and violative of Article 14

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of the Constitution of India. The respondents, in the written submissions, have contended that the benefit of revised pension formula in calculation of pension at the rate of 25% introduced from 1.1.1986 has already been afforded to the applicant from that date and the additional relief as accumulated by the Fourth Central Pay Commission has also been provided by him. The applicant's claim for revised gratuity is not accepted, in view of the judgment of the Hon'ble Supreme Court which I have narrated above, because death-cum-retirement gratuity being a one time lumpsum payment is not subject to upward revision on account of subsequent changes in ceilings etc. So far the challenge to the portion of para 5 of OM dated 16th April, 1987 is concerned, that the additional pension becoming due under this provisions will not however be taken into account for computation of additional relief sanctioned in the preceded paragraphs nor will it qualify for additional commutation can not be held arbitrary or unreasonable or violative of Article 14 of the Constitution of India. The calculation is made on the basis of para 4.1(c)(b) of the said OM dated 16th April, 1987 and that can not be considered as arbitrary, unreasonable and violative of Article 14 of the Constitution of India because as per the recommendation of the Fourth Pay Commission, the Government has implemented that OM and the pension of the applicant was recalculated.

There is no arbitrariness at all in any portion of para 5 of the said OM. The applicant has sought to compare his case with that of one Shri R.R. Shah, but the applicant has retired on 30th September, 1984 whereas Shri R.R. Shah retired on 28th February, 1986 and therefore their cases cannot be compared. The same reasoning would apply with regard to the applicant of O.A. 102/88 and also to the applicant of O.A. 156/88/ though they have not amended O.A. like the applicant of O.A. 565/87.

34. The applicant of O.A. 221/88 has like the applicant of O.A. 565/87 amended his O.A. by adding para 7(a), (b) & (c) claiming the same reliefs as the applicant of O.A. 565/87 but for the identical reasons given in the case above/ is not entitled to any reliefs. The applicant of O.A. 243/88 and 244/88 have not amended the O.A. but for the identical reasons given rejecting the claim of applicant of O.A. 565/87 / also not entitled to any relief. So far the applicant of O.A. 101/88 is concerned, the applicant retired on 3rd September, 1985 and at that time pay, special pay, dearness pay, additional dearness allowance and ad hoc dearness allowance, interim relief were taken into account for the purpose of arriving at the average emoluments. The applicant of O.A. 101/88 has submitted that his pension should be fixed higher than the pension of applicant of O.A. 565/87. The respondents in the written

submissions have stated that at the time of retirement of Shri J.P. Jani, applicant of O.A. 565/87 on 30th September, 1984 the emoluments of ad hoc dearness allowance, additional dearness allowance were not taken into account though they were drawn by him, therefore, the average pay of Shri J.P. Jani as on 30th September, 1984 was lesser than that of applicant Shri K.I.Thakkar of O.A. 101/87 who retired on 3rd September, 1985.

The applicant got more pension of Rs. 535/- p.m. plus Rs. 14,000/- towards gratuity and approximately Rs. 13,000/- in commuted value of pension than that of Shri J.P. Jani, because all element of additional dearness allowance of Rs. 1270/- was treated as pay for the purpose of pension in his case, whereas in the case of Shri J.P. Jani, additional dearness allowance of Rs. 370/- only against Rs.1270/- though actually drawn by him at the time of his retirement was to be taken for the purpose of pension as per then rules in force. In order to remove this anomaly, Government of India revised the pension of the pensioners retired prior to 1.1.1986 and granted the difference to the applicant and Mr. J.P. Jani. It was submitted that the applicant Shri K.I. Thakkar is in better position than that of Shri J.P. Jani as he has received lumpsum amount of Rs. 27,000/- more against the monthly amount of Rs. 45/- p.m. more granted to Shri J.P. Jani on the recommendations of Fourth Pay Commission. The pension of this applicant has been refixed on the

basis of para D of 4(1) of O.M. dated 16th April, 1987, according to which the Government servants who retired on or after 31st March, 1985 and upto 31st December, 1985, no additional relief would be admissible corresponding to the increases sanctioned in clauses (a), (b) & (c) and therefore, this applicant who retired on 3rd September, 1985 is not entitled to get any benefit of that circular due to the above para. It was submitted that however, as per para 5 of the said OM in those cases the pension is to be calculated at 50% of average emoluments and accordingly his pension has been refixed. The principle enunciated in para D of 4.1 of the said OM dated 16th April, 1987 is a policy matter of Government of India and it is for the Government to decide in what respect pre 1.1.1986 and post 1.1.1986 pensioners shall be treated as at par and therefore, no question of discrimination arises. Depending upon the length of service or retirement of government servants/pensioners, there is bound to be some difference in their emoluments/pension and the formula governing their emoluments/pensions. A person retiring on an earlier date, when an old formula for calculating pension was applicable, cannot as of a right claim parity with another who retired latter, when a different formula for calculating pension was applicable. Therefore, there is no substance in the case of this applicant that he should be paid more

pension than that of Shri J.P. Jani. There is no anomaly in the fixation of both the officers has been done correctly as per OM.

35. Having considered all these submissions of the learned advocate and the applicants, I hold that the applicants of application No. 565/87 and 221/88, who have amended the application by adding para 7(a), (b) & (c) of their relief in O.A. have failed to establish that the OM dated 14th April, 1987 or the portion of OM dated 16th April, 1987 is either arbitrary or unreasonable or violative of Article 14 of the Constitution of India and hence all the applications deserve to be rejected. All applicants' claim of revised pay scales and pension, commutation of pension and gratuity in the revised pay scale as would be payable to Government employees who retired after 1.1.1986 is also rejected as prayed in para 7 in their respective application is also rejected for the reasons given in details above. The result is that all the applications fail and hence they deserve to be dismissed.

36. If any error in computation is pointed out by the applicants, the respondents should correct the same. Therefore, if any of the applicants feels that while computation of pension by the respondents according to the OM, there is an error they may point out the same if any to the respondents who will

certainly correct the error.

O R D E R

The applications, O.A.Nos. 565/87,
101/88, 102/88, 156/88, 221/88, 243/88 and 244/88
are dismissed. No orders as to costs.

Renzil
(R.C. BHATT)
Member (J)