**CENTRAL ADMINISTRATIVE TRIBUNAL**
**ERNAKULAM BENCH**

Original Application No. 301 of 2004
and
Original Application No. 164 of 2005

Thursday, this the 3rd day of August, 2006

**C O R A M :**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**
**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

**1. O.A. NO. 301/2004**

1. Shri V. Subramoniam,
S/o. Late Shri K.S. Venkateswaram,
Retired Inspector General of Police,
Residing at 229, Harikripa, 5th Main,
13th Cross, Indira Nagar, IInd Stage,
Bangalore : 560 038 (Died)

2. Parvathi Subramoniam,
W/o. Late Shri V. Subramoniam,
Residing at 229, Harikripa, 5th Main,
13th Cross, Indira Nagar, IInd Stage,
Bangalore : 560 038

3. Meena Balachandran,
Residing at D/5, Shreshta,
473, Kilpauk Garden Road,
Chennai : 600 010

4. Saraswathy Moorthy,
Residing at 314, 1844 W 7th Ave,
Vancouver, BCV 6 AIS8,

5. K.S. Geethalakshmy,
Residing at 229, Harikripa, 5th Main,
13th Cross, Indira Nagar, IInd Stage,
Bangalore : 560 038

6. K.S. Venkteswaran,
Residing at 229, Harikripa, 5th Main,
13th Cross, Indira Nagar, IInd Stage,
Bangalore : 560 038 ..... Applicants.

(By Advocate Mr. Premjit Nagendran)

v e r s u s

1. The State of Kerala represented by its
Chief Secretary to Government,
Government Secretariat,
Thiruvananthapuram.

2. The Government of India,
Ministry of Personnel Public Grievances & Pension,
Department of Personnel & Training,
New Delhi.

3. The Accountant General (A&E) Kerala,
P.B. No. 5607, M.G. Road, Trivandrum.

4. The Accountant General (A&E) Kerala,
Office of the Accountant General (A&E),
Karnataka, Residency Park Road,
Bangalore : 560 001. ... Respondents

(By Advocate Mr. K. Thavamony for R/1 & R/3 and
Mr. T P M Ibrahim Khan for R/2 and R/4)

**2. O.A. NO. 164/2005**

A. Hassankutty,
Retired Chief Conservator of Forests,
Arakkal Manzil, Chalappuram,
Calicut - 673 002 ... Applicant.

(By Advocate Mr. P.V. Mohanan)

versus

1. Union of India
Represented by its Secretary,
Ministry of Personnel, Public
Grievances & pension, New Delhi.

2. Accountant General (A&E) Kerala,
Accountant General's Office,
M.G. Road, Thiruvananthapuram.

3. State of Kerala,
Represented by its Chief Secretary,
Government Secretariat,
Thiruvananthapuram. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil for R/1 & R/2 and Mr. Renjith A, Govt. Pleader for R/3)

These applications having been heard on 27.07.06, the Tribunal on 3.8.06. delivered the following:

**O R D E R**
**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

The questions involved in the two cases being identical, these cases were heard together and common order is pronounced. Of course, the facts of these cases are spelt out under two separate paragraphs.

2. The core issue is as under:- The highest posts in the Indian Police Service at the time the applicant in OA 301/04 superannuated on 31-12-1980 was Inspector General of Police and the applicant was heading the Police organization in the State of Kerala holding that post. Similarly, the highest post in the Indian Forest Services at the time the applicant in OA 164/05 superannuated from service was Chief Conservator of Forests and the said applicant was heading the Forest Services in Kerala holdinig that post. Pension was fixed on the basis of the extant rules and regulations of pension, applicable to the All India Services.

3. Later on, Government of India by Notification No. 11052/1B2/AIS II B dated 16-07-1982 substituted the designation of Inspector General of Police as ***Director General and Inspector General of Police.*** The above substitution was effective in the IPS cadre of Kerala State from the said date i.e. 16-07-1982. After this substitution, the designation Inspector General of Police was made applicable to the post lower than the Head of the Department. Obviously, the pay scale attached to this post is less than the one prescribed for the post of Director General and Inspector General of Police. Similarly, in so far as Indian Forest Service is concerned, the post of Chief Conservator of Forests was substituted by the designation "***Principal Chief Conservator of Forests***" and the pay scale attached to it was also substituted by Rs 7,300 – 7,600 vide Indian Forest Services (Pay) Second Amendment Rules, 1968, notified on 04-05-1988. The basis of this amendment is the notification gazetted in GSR No. 433 E, dated 06-04-1988.

4. Under the 5th Pay Commission Recommendations, the highest of the pay scales of IPS and IFS had been proposed as Rs 24,050 – 26,000/- effective from 01-01-1996. And in so far as pension was concerned, full pension shall in no case be less than 50% of the minimum, of the revised scale of pay introduced w.e.f. 01-01-1996 for the post held last by the member of the service at the time of his retirement. Initially the applicants in the O.As had been granted pension @ Rs 12,025/- being 50% of the minimum in the scale of pay of Rs 24,050 –

26,000/-. However, as the respondents had, sometimes in 2000 held that pension to the applicants should be fixed at 50% of the replacement scale of post last held by the pensioner as revised w.e.f. 01-01-1996 and not the upgraded scale, the pension was reduced to Rs 9,200/-. Further, recovery of the excess payment was also sought to be made. This has resulted in the applicants moving two separate O.As, (OA No. 876/2000 filed by the IPS officer and O.A. No. 496/2000 by the I.F.S. Officer) and these, together with yet another OA No. 442/2000 filed by another I.P.S. Officer, were dismissed by a common order dated 19-07-2002 . Against this order, the applicants filed Civil Writ Petitions (O.P. No. 25654/2001 (S) by the IPS officer and OP No. 29150/2001 (S) by the IFS officer). The two writ petitions were disposed of by judgments both dated 25-02-2003, with a direction to the respondents concerned to follow the principles of natural justice before reducing the pension of the petitioners.

5. Pursuant to the Judgment of the Hon'ble High Court of Kerala, the Deputy Accountant General (GE) in the office of the Accountant General (A &E) Kerala had sent letters dated 02-05-2003 to the applicants herein, which are identically worded (of course, mutatis – mutandis) and invited objections, if any, within one month of the date of receipt of the letter. In response to the same, replies were sent. The one sent by the applicant in OA No. 301/2004 was not on merit but the question of authority competent to issue the show cause notice was raised, reserving the right to raise the points on merit before the competent authority. According to the applicant in the said OA "*the Central Government is the*

*authority"* to fix his pension. Applicant in OA 164/2005, of course, dealt with the merits of the case in his reply.

6. It is in the wake of the above stated replies that the respondent No. 2 had passed the following impugned orders:-

In OA No. 301/2004 :

(a) Order No. GE1/C/03-04/670 dated 07-10-2003 (Annexure – A-X ) :

(b) Order No. D.O.PA/A/2003-04/PPO.No.7983/OG/Kerala/1075 dated 12-11-2003 (Annexure A-XI) :

In OA No. 164/2005 :

(a) Order No.GE/1/B/IFS/03-04/227 dated 03-07-2003 (Annexure A-XIII)

7. After the filing of OA No. 301/2004, as the applicant had expired, his legal heirs were brought on records following the due procedure, vide order dated 23-06-2005. However, ~~for~~ in this order for the sake of convenience, it is the original applicant that has been referred to as applicant.

8. Respondents have contested the OA. According to them, the fixation of pension @ Rs 9,200/- in the place of Rs 12,025/- is legal as the minimum of the pay scale attached to the post held by the applicants was only Rs 18,400 in the scale of Rs 18,400 – 22,400/- (i.e. Pay of I.G. Police and of Chief Conservator of Forests). As regards the locus of the Accountant General to issue show cause notice, it has been stated that the case of the applicant was referred to the

Ministry of Home Affairs and their view was as extracted in the letter dated 07-10-2003, referred to above.

9. State Government has also filed its response.

10. Arguments were heard. The counsel for the applicant in OA 164/2005 has contended that the following legal issues are involved in this case:-

(a) *determination of equivalence is "the nature and responsibilities duties of attached to the post and not the pay attached to the post*

(b) Such equality clause applies at all stages i.e. *initial recruitment, promotion, retirement, payment of pension and gratuity*

*(c) "Substitution" or "explanation to an Act even if notified at a later point of time as a declaratory statute, the same has retrospective effect.*

*In support of his contention, he has relied upon the following decisions:-*

*(a) **E.P. Royappa v. State of T.N.,**[1] **wherein the Apex Court has held as under:-***

*"The determination of equivalence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-Cadre post under sub-rule (1). It is a mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and dudes attached to the non-Cadre post and determine the equivalence. There the pay attached to the non-Cadre post is not material. As pointed out by the Government of India in a decision given by it in MHA Letter No. 32/52/56-AIS(II), dated July 10, 1956 the basic criterion for the **determination of equivalence is "the nature and responsibilities duties of attached to the post and not the pay attached to the post".*** (emphasis supplied)

1(1974) 4 SCC 3

**(b) State of Kerala v. N.M. Thomas[2] wherein the Apex Court has held as under:-**

*"38. The principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity."*

**(c) CIT v. Podar Cement (P) Ltd.,[3] wherein the Apex Court has held as under:-**

*51. In Justice G.P. Singh's Principles of Statutory Interpretation (Sixth Edn., 1996) under the heading "Declaratory Statutes", the learned author has summed up as follows:*

> *"Declaratory statutes.—The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court:*
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> *'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".'*

*But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally*

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*2(1976) 2 SCC 310*
*3(1997) 5 SCC 482*

*intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law."*

***(d) National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India [4], wherein the Apex Court has held as under:-***

*15. The legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the question of competence but is also subject to several judicially recognized limitations with some of which we are at present concerned. The first is the requirement that the words used must expressly provide or clearly imply retrospective operation.[5] The second is that the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional.[6] The third is apposite where the legislation is introduced to overcome a judicial decision. Here the power cannot be used to subvert the decision without removing the statutory basis of the decision.[7]*

*16. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment.*

*"Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the*

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*4(2003) 5 SCC 23*

*5S.S. Gadgil v. Lal & Co., AIR 1965 SC 171, 177; J.P. Jani v. Induprasad Devshanker Bhatt, AIR 1969 SC 778, 781*

*6Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667 : (1964) 1 SCR 897, 915; Jawaharmal v. State of Rajasthan, AIR 1966 SC 764 : (1966) 1 SCR 890, 905; Ujagar Prints (II) v. Union of India, (1989) 3 SCC 488, 517 : 1989 SCC (Tax) 469*

*7Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283; Lalitaben v. Gordhanbhai Bhaichandbhai, 1987 Supp SCC 750; Janapada Sabha Chhindwara v. Central Provinces Syndicate Ltd., (1970) 1 SCC 509; Indian Aluminium Co. v. State of Kerala, (1996) 7 SCC 637*

*legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them...."*[8]

***(e) Zile Singh v. State of Haryana[9] wherein the Apex Court has held as under:-***

*8. At the very outset we may state that the retrospectivity in operation of the text as amended by the Second Amendment came up for the consideration of a two-Judge Bench of this Court in Sunil Kumar Rana v. State of Haryana[10]. This Court held that the legislative intent to compute the period of one year under the proviso is from the "commencement of this Act" meaning thereby from the date of coming into force of Haryana Act 3 of 1994 and not Haryana Act 15 of 1994 which merely substituted the word "after" by the word "upto". The result of the substitution was to read the provision as amended by the word ordered to be substituted. The Court held:*

> *"The legislature seems to have realised the need for substitution on becoming aware of the anomalies and absurdities to which the provision without such substitution may lead to, even resulting, at times, in repugnancy with the main provision and virtually defeating the intention of the legislature. The modification of the provision, as carried out by the substitution ordered, when found to be needed and necessitated to implement effectively the legislative intention and to prevent a social mischief against which the provision is directed, a purposive construction is a must and the only inevitable solution. The right to contest to an office of a member of a municipal body is the creature of statute and not a constitutional or fundamental right."*

***(f) Govt. of India v. Indian Tobacco Assn.,[11] wherein the Apex Court has held as under:-***

***24.** In Ramkanali Colliery of BCCL v. Workmen by Secy., Rashtriya Colliery Mazdoor Sangh[12] a Division Bench of this Court observed:*

*"What we are concerned with in the present case is the*

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8Shri Prithvi Cotton Mills v. Broach Borough Municipality, (1969) 2 SCC 283

*9(2004) 8 SCC 1*

10 *(2003) 2 SCC 628*

*11(2005) 7 SCC 396*

*12 (2001) 4 SCC 236*

*effect of the expression 'substituted' used in the context of deletion of sub-sections of Section 14, as was originally enacted. In Bhagat Ram Sharma v. Union of India[4] this Court stated that it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression 'substituted' is used. Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. In our view there is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such."*

25. *In Zile Singh v. State of Haryana[13] wherein the effect of an amendment in the Haryana Municipal Act, 1973 by Act 15 of 1994 whereby the word "after" was substituted by the word "upto" fell for consideration, wherein Lahoti, C.J. speaking for a three-Judge Bench held the said amendment to have a retrospective effect being declaratory in nature as thereby obvious absurdity occurring in the first amendment and bring the same in conformity with what the legislature really intended to provide was removed, stating: (SCC P. 12, paras 23-25)*

> *"23. The text of Section 2 of the Second Amendment Act provides for the word 'upto' being substituted for the word 'after'. What is the meaning and effect of the expression employed therein — 'shall be substituted'?*
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> *24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.*
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> *25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation,*

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*13 (2004) 8 SCC 1*

*ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P.[14], State of Rajasthan v. Mangilal Pindwal[15], Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.[16] and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael[17]. In West U.P. Sugar Mills Assn. case[6] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case[7] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case[8] a three-Judge Bench of this Court emphasised the distinction between 'supersession' of a rule and 'substitution' of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."*

11. The counsel for the applicant in the other O.A., i.e. OA No. 301 of 2004 while adopting the above arguments on merits as canvassed by the counsel for the applicant in OA 164/04, has, in addition, submitted that first of all, the question of locus has to be decided. It has been argued by the counsel for the applicant that the authority competent to decide the quantum of pension is the Central Government and Accountant General is only executing the authority of the Central Government. He has, therefore, contended that the reply filed on behalf of Respondent No.2 and the action taken by the said Respondent No. 2

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*14(2002) 2 SCC 645*

*15(1996) 5 SCC 60*

*16(1969) 1 SCC 255*

17 *1963 Supp (2) SCR 244*

cannot be taken into account at all. Again, in respect of recovery, the counsel for the applicant in this OA also submitted that in any event recovery cannot be effected.

12. First, the contention of the counsel for the applicants in OA 301/04 relating to the locus of Respondent No. 2. True, it is the Government of India which fixes the pension and the applicant has responded to the show cause notice issued by the Accountant General stating that that organization has no competence to issue the show cause notice. However, vide impugned order dated 07-10-2003, what was conveyed was the final decision of the Ministry of Personnel and for easy reference, the said portion is extracted below:-

> "Please refer the letters cited under reference. Your case was referred to the Government of India, Ministry of Home Affairs and to Department of Pension& Public Grievances for their information. The Ministry of Home Affairs vide reference 2nd cited have intimated as follows:
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> "After the Court's order, an opportunity has also been given to the petitioners by AG/kerala. In this response, Shri Subramanian has, however, questioned the jurisdiction to issue notice by AG/Kerala and has stated that he reserved his right to raise the issue before the competent authority. Shri Rajan has also requested to refix his pension on the basis of the upgraded post.
>
> The fixation of pension is done by the State Government in consultation with the concerned AGs. In these cases, the pension seems to have been fixed rightly and there as such appears no reason for refixation of pension in these cases".

13. Thus, Respondent No. 2 in OA No. 301/2004 has only conveyed the decision. Yet, the counsel for the applicant is right in contending that in that

event, as the applicant has not met the show cause notice on merit, he should have been given an opportunity to reply the show cause notice (treating it as one issued with the consent of Respondent No. 1) on merit. This, of course, the applicant could have himself done even before approaching the Tribunal through this O.A. Now that he has argued the matter on merit too here, the matter is considered on merit.

14. Admittedly, the applicants were granted the higher rate of pension on the basis of the 5th C.P.C., and its acceptance by the Government. Thus, initially the Government itself felt that all those who retired as Inspector General of Police/Chief Conservator of Forests shall enjoy the pension at 50% of the minimum of the pay scale attached to the highest post in the I.P.S and I.F.S. Cadre. It is only later on, holding that the pension so granted was erroneous that the same was revised downward, taking the minimum of the pay scale as for Inspector General and Chief Conservator of Forest respectively. Also recovery was sought to be effected.

15. The issue involved now, therefore, congeals into the question as to what is the replacement scale of the post of I.G. of 1980 and Chief Conservator of Forest as of 1984 when the applicants superannuated from these posts. The designations – Inspector General and Chief Conservator of Forests - were substituted, by statutory rules, respectively by designations as 'Director General and Inspector General (DG & IG) and Principal Chief Conservator of Forests.

The pay scale of the later post also underwent an upward revision at the time of substitution. And the designations of I.G. And Chief Conservator of Forests were retained but in respect of posts subordinate to the posts of D.G & IG and Principal Chief Conservator of Forests respectively and with lower pay scales than those of the D.G. & IG and Principal Chief Conservator of Forests. For adjudication ~~this~~ purpose, the intention in revising the pension as spelt out by the 5th Pay Commission in its recommendations is very much to be gone through. For, as held by the Apex Court in the case of ***Shah Babulal Khimji v. Jayaben D. Kania*** [18] ***Law must be interpreted so as to advance the object of the statute and give the desired relief.*** Whatever may the wordings, 'ultimately, it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention.' ( ***Dattatraya Govind Mahajan v. State of Maharashtra)***[19] The 5th CPC has made recommendations in respect of pension to pre 1986 retirees also and the relevant paragraphs are as under:-

> *137.7 The concept of parity, which is also known by the term Equalisation of Pension, means that past pensioners should get the same amount of pension which their counterparts retiring on or after 1.1.1996 from the same post will get irrespective of the date of retirement or the emoluments drawn at the time of retirement of the past pensioners. The concept of parity in pension pre-supposes the existence of a universally acceptable system by which comparison can be drawn between past and current retirees. The only possible manner in which this can be made possible is by introducing the system of Rank Pension or one pension for one grade. At present the system of Rank Pension is in vogue only for personnel below officer rank in the armed forces. Under the system, if the person has held the rank, from which he retires for ten months or more, his*

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*18(1981) 4 SCC 8*
*19 (1977) 2 SCC 548*

*pension is calculated with reference to emoluments at the maximum of the scale of pay attached to the rank irrespective of the actual pay drawn by him. If he has not held the said rank, for the minimum period of ten months, his pension is computed with reference to maximum pay of the next lower rank which he held for ten months.*

*137.10 Mainly because of the reasons mentioned in the preceding paragraphs, past pensioners are in receipt of varying amounts of pension though they had retired from broadly comparable posts with the same length of qualifying service. The difference in the amount of basic pension alone between pre-1.1.1986 and post 1.1.1986 retirees up to the level of Director works out to Rs.500 and more, whereas in respect of officers of the rank of Joint Secretary and above, the difference ranges between Rs.850 and Rs.1240. If the Dearness relief and interim reliefs are added to the basic pension, the difference would range between more than two-and-a-half times and more than two times of the above amounts respectively because of varying percentages of neutralisation.*

*137.14 As a follow up of our basic objective of parity, we would recommend that the pension of all the pre-1986 retirees may be up dated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees. This step would bring all the past pensioners to a common platform or on to the Fourth CPC pay scales as on 1.1.1986. Thereafter, all the pensioners who have been brought on to the Fourth CPC pay scales by notional fixation of their pay and those who have retired on or after 1.1.1986 can be treated alike in regard to consolidation of their pension as on 1.1.1996 by allowing the same fitment weightage as may be allowed to the serving employees. However, the consolidated pension shall be not less than 50% of the minimum pay of the post, as revised by Fifth CPC, held by the pensioner at the time of retirement. This consolidated amount of pension should be the basis for grant of dearness relief in future. The additions to pension as a result of our recommendations in this chapter shall not, however, qualify for any additional commutation for existing pensioners. (Emphasis supplied)*

16. The above recommendations were accepted by the Government, and in pursuance of the same, by GSR 35(E), the Government published in Extraordinary Gazette dated 14-01-1999 under Sec 3(IA) (I) of All India Services Act 1951 amending the All India Services (Death Cum Retirement benefits)

Rules, 1958, as follows:-

> (a) *In Rule 18, in Sub Rule 1, in clause b(i) in sub Clause (i) for the proviso, the following roviso shall be sustituted namely;*
>
> *"Provided that the pension calculated under this Rule shall not be more than Rs 15,000/- per month subject to the condition that the full pension shall in no case be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st day of January 1996 for the posts last held by the member of the service at the time of his retirement."*

17. It is the above rule that is interpreted by the Respondents holding that since the applicants were, at the time of retirement, holding the post of I.G./Chief Conservator of Forests (as the case may be), and since these posts are now existing with a pay scale of Rs 18,400 – 22,400, their pension has been fixed correctly and they are not entitled to the pension of Rs 12,025/- which is available to the officers in the pay scale of Rs 24,050 – 26,000/-. The contention of the applicants, however, is that what is to be seen is the comparative status and not mere designation and since the applicants were holding the post of Head of the Department at the time of retirement, as the post of I.G and Chief Conservator of Forests were the highest posts in the respetive services and since these posts were substituted by the present post of D.G. & I.G and Principal Chief Conservator of Forests respectively ~~and~~ as such, the pay scales attached to the highest posts in the services should be the basis for working out the pension payable to the applicants. There is full substance in the contention of the applicants and it is this interpretation that would go well with the spirit and intention of the Pay Commission in making the recommendations as extracted

above. Thus, the contention of the respondents is liable to be rejected.

18. A weak argument was sought to be advanced by the respondents by stating that in the Government of Kerala, there were earlier the ex-cadre posts of Principal Chief Conservator of Forests which were later on encadred and hence there is a creation of new post of Principal Chief Conservator of Forests. This contention is to be rejected outrightly. For, as held in the case of E.P. Royappa equalization has to be with reference to the status. And, admittedly, since the post of I.G in the IPS and Chief Conservator of Forests in the IFS were the highest posts, comparison of the highest posts as of today should alone be made and the same is respectively DG&IG in IPS and Principal Chief Conservator of Forests. Again, there should be a uniform application of the All India Services Rules and in this regard, reliance placed by the counsel for the applicants on the unreported judgment of the Apex Court in the case of P.C. Wadhwa vs State of Haryana (CA No. 4932 of 1992 decided on 15-1-1994 is relevant. In that case, while the I.P.S. (Pay) 5th Amendment rules, 1952 came into force on 20-10-1982 whereunder the post of Inspector General of Police was substituted by the Director General and Inspector General of Police, Haryana, the State of Haryana issued the order dated 08-03-1985 whereunder the post of Inspector General of Prison, Haryana, held by Shri P.C. Wadhwa was equated in status and responsibility to the post of Inspector General of Police w.e.f. 20-12-1982, which according to the appellant was illegal as there was no cadre post with the nomenclature of Inspector General of Police,

Haryana under the rules as the same had been substituted by the post of Director General and Inspector General of Police, Haryana. The Apex Court has held, "*we are of the view that there is plausibility in the contention raised by Mr. Wadhwa; we are prima facie of the view that the notification dated October 31, 1985 should have been issued with effect from October 10, 1982.*" (Reference can also be made to the decision of the Apex Court in the case of ***State of Haryana v. P.C. Wadhwa,***[20] wherein the Apex Court has observed, "*7. Under Rule 1.2, the Inspector General of Police is the head of the Police Department and is responsible for its direction and control and for advising the Provincial Government in all matters connected with it. Thus, the Inspector General of Police being the head of the Police Department, there is no immediately superior officer to him in the Police Service.*"

19. In view of the above discussion, the O.As succeed. It is declared that the applicants are entitled to pension @ 50% of the minimum of the pay in the scale attached to the highest post in the I.P.S and I.F.S. The original fixation of pension made by the respondents, fixing the pension at Rs 12,025/- is held to be correct and its revision is held to be erroneous. Consequently, the impugned orders in the respective O.As i.e., Orders dated 3rd July, 2003 (Annexure A-XIII) of respondent No. 2 in the case of OA No. 164/2005 and orders dated 7-10-2003 and 12-11-2003 (Annexure A X and A XI respectively) of O.A. No. 301/2004 are hereby quashed and set aside. Thus, neither any recovery

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*20 (1987) 2 SCC 602*

can be made, nor any truncation in the pension fixed by the respondents originally effective from 01.01.1996. In respect of OA No. 301/2004, the pension admissible would be in the nature of Family pension and at the rates applicable as per the rules.

20. The applicant in OA 164/05 is an octogenarian while the original applicant in the other OA already expired and his family is continuing this battle. These were forced to move the matter twice before the Tribunal and as such, justice demands that their prayer for cost is also considered. Accordingly, cost payable by the respondents to the applicants is quantified at Rs 5,000/- in respect of each application. This amount should be paid within a period of three months from the date of communication of this order.

(Dated, the 3rd day of August, 2006)

**K B S RAJAN**
**JUDICIAL MEMBER**

**SATHI NAIR**
**VICE CHAIRMAN**

cvr.