

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO.31 OF 2011**

*Friday...*, this the 10<sup>th</sup> day of February 2012

**CORAM:**

**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER**

- |    |  |              |
|----|--|--------------|
| 1. | K Venugopalan Nair,<br>Scientists(Retired),<br>ISRO, Trivandrum<br>Residing at<br>H.No.14, Sree Nagar<br>Paruthipara, Muttada Post<br>Thiruvananthapuram – 695 025 |              |
| 2. | P Reghupalan<br>Scientists(Retired),<br>ISRO, Trivandrum<br>Residing at<br>T.C 2/1881, Veerabhadra Garden<br>Pottakuzhi, Thiruvananthapuram – 695 004              | - Applicants |

(By Advocate Mr.Vishnu S Chempazhanthiyil)

**Versus**

- |    |   |               |
|----|---|---------------|
| 1. | The Union of India represented by the Secretary<br>Ministry of Personnel, Public Grievances & Pension<br>Department of Pension & Pensioners' Welfare<br>Lok Nayak Bhavan, New Delhi -3. |               |
| 2. | Vikram Sarabhai Space Centre<br>Represented by its Controller<br>VSSC, Thumba<br>Trivandrum – 695 022   |               |
| 3. | Indian Space Research Orgamosation<br>Represented by its Secretary<br>Department of Space<br>Antariksh Bhavan<br>New Bel Road, Bangalore-560 231  | - Respondents |

(By Advocate Mr.Sunil Jacob Jose, SCGSC (R1-3))

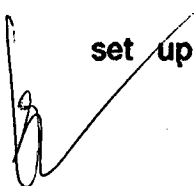


The application having been heard on 07.02.2012, the Tribunal on the 10.02.2012 delivered the following:

### **ORDER**

1. The applicants have retired from the Vikram Sarabhai Space Centre (VSSC) of the Indian Space Research Organization (ISRO) respectively on 31-05-2000 and 30-11-2004. Thus, both are pre- 1-1-2006 retirees. At the time of their retirement, they were in the pre-revised scale of Rs 16,400 – 20000 and they were drawing the pay, respectively Rs 17,300 and Rs 19,500/-. On the basis of their pay as above, they were granted pensions of Rs 8538 and Rs 14663 respectively.

2. Ministry of Finance had issued OM No. F 1/1/2008-IC dated 30-08-2008 intimating the manner of calculation of initial fixation of pay as per Rule 7 of the CCS(RP) Rules, 2008 in respect of those employees who were in service as on 01-01-2006. This revised pay was not applicable to those who had superannuated prior to 01-01-2006. In so far as revision of pension to pre-2006 retirees, DP & PW OM No. 38/37/08-P&PW(A) pt. 1 dated 14-10-2008 (Annexure A4) was adopted. According to the applicants, Annexure A-4 led to serious anomalies in the matter of fixation of pension in respect of the pre-2006 pensioners. According to them, Annexure A-2 order (first Schedule to Rule 3 and 4 of CCS(RP) Rules, 2008) is the fitment formula for revision of pay and taking into account para 4.2 of Annexure A-3, which provides that the revised pension shall not be lower than 50% of the minimum of the pay in the Pay Band, the applicants claim pension at the rate of Rs 24,395/- as against the amount paid to them. The applicants preferred representation, vide Annexure A-6 (by the second applicant). Many an association of retired pensioners had taken up the matter with the Ministry and the respondents set up an anomalies committee to settle the anomalies arising out of the

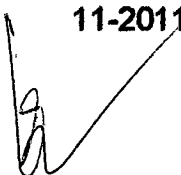


implementation of the 6<sup>th</sup> Pay Commission's Recommendations, vide Annexure A-10. The issue raised by the applicants were also brought to the notice of the anomaly committee. However, by Annexure A-11 order dated 19-03-2010 which was based on Annexure A-12 OM dated 11-02-2009, the claim of the applicants had been rejected. The applicants have, therefore, filed this OA seeking the following reliefs:-

- “1. Direct the respondent to consider sanctioning pension at the rate of Rs.24,295/-, which is the 50% of the minimum of the pay in the pay band S-26 as per the fitments formula at Annexure A2.
2. Call for the records leading to the issue of Annexure A-4 and set aside Annexure A-4 to the extent the same sanctions pension to the applicants at Rs.23,150/- instead of Rs.24,295/- is illegal and arbitrary and liable to be interfered with.
3. Call for the records leading to the issue of Annexure A-11 and set aside Annexure A-11.
4. Direct the respondents to reconsider Annexure A-11 and take into account the grievances raised in Annexure A6.
5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
6. Award the cost of these proceedings. “

3. Respondents have contested the O.A. and defended the correctness of Annexure A-4, A-11 and A-12 and prayed for dismissal of the O.A.

4. The applicant, through M.A. 146 of 2012 had filed a copy of the order dated 01-11-2011 in OA No. 655 of 2010 which was decided by the Principal Bench of the C.A.T. This Bench of the Tribunal, in OA no. 843 of 2011 decided on 24-11-2011 based its order upon the Full Bench judgment and allowed the said O.A.



5. Counsel for the applicant submitted that the legal issue involved in this OA is no longer res integra in as much as the Full Bench of the Principal Bench had already decided the issue and the same has to be followed by the Division Bench.

6. Counsel for the respondents did not refute that the case of the applicant is not dissimilar to the case in OA No. 655 of 2011.

7. Arguments were heard and documents perused. The Full Bench of the Principal Bench has, after elaborate analysis of the case, ultimately quashed and set aside inter alia OM dated 14-10-2008 (Annexure A-4) and directed the respondents to re-fix the pension of all pre-w006 retirees w.e.f. 01-01-2006 based on the resolution dated 29-08-2008. The said recommendation reads as under:-

*" All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 01-04-2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1-1-2006. This is consistent with the fitment benefit being allowed in case of the existing employees. The fixation of pension will be subject to the provision that the revised pension in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. (5.1.47).*

*Accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86, i.e. basic pension + Dearness Pension (wherever applicable) + dearness relief of 24% as on 1-1-2006, instead of 1.74. "*

8. This Bench of the Tribunal, had, in OA No. 843 of 2010 followed the Full Bench Judgment and allowed the said O.A. Relevant part of the order in the said OA reads as under:-




"15. Applicants in para-11 of the Additional-Affidavit have explained how the Note prepared by a junior functionary (at the level of an Under Secretary) in the Department of Pension & Pensioners Welfare in regard to para-4.2 of the OM dated 1.9.2008 has been given a go-by to the resolution dated 29.08.2008. The Note so prepared has been extracted in this para, which thus reads:

"Whether the pension calculated at 50% of the minimum pay in the pay band would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale, or (ii) at the minimum of pay in the pay band which an employee in the pre-revised scale of pay will be getting as per the fitment tables at Annex I of the CCS (Revised Pay) Rules, 2008 plus the grade pay corresponding to the pre-revised pay scales."

16. It is pleaded that first the need for such a doubt being raised is not clear as both the formulation of the CPC in para 5.1.47 as well as in Government Resolution dated 29.8.2008 (Annexure A-7 of the OA) is clear that "the fixation of pension will be subject to the provision that the revised pension in no case, shall be lower than fifty percent of the **sum of the minimum of the pay in the pay band and the grade pay thereon** corresponding to the pre-revised pay scale from which the pensioner had retired." (emphasis added). The use of words 'sum of', 'and' and 'thereon' leaves no doubt that both the minimum of the pay in the pay band and the grade pay have to correspond to the pre-revised pay scale. Second, without bringing out merits or demerits of either formulation, the lower functionary in DOP & PW incorporates in the clarification against item 4.2 in the OM dated 1.9.2008, the first option about "minimum of pay in the pay band (irrespective of the pre-revised scale of pay)". What is worse is that there is no application of mind even at the level of Director and Secretary who merely sign the note and the clarification is issued after obtaining finance concurrence and approval of MOS (PP), without going back to the Cabinet for such a modification.

17. The learned counsel has further argued that the resultant injustice done to the pre-1-1-2006 pensioners had even been recognized by MOS (F) and MOS (PP) in their letters to the PM and MOS (F) respectively, copies of which are at Annexures A-11 (page 169) and A-12 (page 170) of the OA. A formal proposal was also sent by DOP & PW to Department of Expenditure seeking rectification but was not accepted by the latter. It was also incorrectly mentioned that the earlier provision in para 4.2 of OM dated 1.9.2008 has been issued in pursuance of the approval of the Cabinet granted to the Report of the Sixth CPC and any change would entail substantial financial implications and this was done only with the approval of the Secretary (Expenditure) without putting up the note to MOS (F) who had himself supported the change. A copy of this Note dated 2.1.2009 is enclosed as Annexure 5.



18. As regards the grievance to OM dated 14.10.2008 based on the OM dated 1.9.2008 (as clarified by OM dated 3.10.2008) whereby a revised table (Annexure A-1) of the pre-2006 pensioners pay scale/pay was finalized to facilitate payment of the revised pension/family pension, applicants have prepared a chart in respect of minimum of the pre-revised scales (modified parity) of S 29 along with 5 scales included in PB-4 works out as under and thus reads:

<b>Min of Pre revised scale</b>	<b>Pay in the Pay Band</b>	<b>Grade Pay</b>	<b>Revised Basic Pay (2+3) Rs.</b>	<b>Pension 50% of (2+3) Rs.</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
S-24 (14300)	37400	8700	46100	23050
S-25 (15100)	39690	8700	48390	24195
S-26 (16400)	39690	8900	48590	24295
S-27 (16400)	39690	8900	48590	24295
S-28 (14300)	37400	10000	47400	23700
S-29 (18400)	44700	10000	54700	27350

The first 4 columns of the above table have been extracted from the pay fixation annexed with MOF OM of 30<sup>th</sup> August 2008 (referred to in para 4.5 (iii) above). Revised pension of S 29 works out to Rs.27350 which has been reduced to Rs.23700 as per DOP OM of 3-10-2008 (para 4.8 (B) below).

It was explained during arguments that pay in the Pay Band indicated in column No.2 above table relates to the pay in the revised pay scale corresponding to the minimum pay in the pre-revised pay scale.

19. On the basis of this chart it has been pleaded that as per the impugned OM dated 14.10.2008 in the case of S-24 officers the corresponding pay in the Pay Band against 14300/- is shown as 37400. In addition, Grade Pay of Rs.8700/- was given totaling Rs.46,100/-. Similarly, revisions concerning all the other pay scales were accepted by the aforementioned OM dated 14<sup>th</sup> October, 2008. The illegality which has been perpetrated in the present matter is apparent from the fact that whereas an officer who was in the pre-revised scale S-24 and receiving a pay of Rs.14,300/- would now receive Rs.37,400/- plus grade pay of Rs.8700 and his full pension would accordingly be fixed at Rs.23050 (i.e. 50% of 37400 pay plus grade pay Rs.8700) pursuant to the

implementation of VI CPC recommendations after 1.1.2006, whereas a person belonging to the Applicant Association, who was drawing a pay of Rs.18,400/- or even Rs.22,400/- (maximum of scale) in the pre-revised S-29 scale will now be getting pension as only 23700/- (i.e. 50% of pay of Rs.37,400/- plus grade pay of Rs.10000). However, the misinterpreted revised basic pay of Rs.37400 has caused a grave miscarriage of justice since those officers who belong to a much higher grade have now been equated with those who were working under them in a lower rank/grade. It is further relevant to note that those officers belonging to S-29 who would retired after 1.1.2006 would, however, be placed in the revised pay scale differently. For instance, a person who was in the pre-revised pay scale of 18000-22400 (S29) at Rs.18,400/- would now get Rs.44,700/- in addition to Grade Pay of Rs.10,000/- i.e. the revised basic pay of Rs.61,850/-. However, a person who retired only one day prior i.e. on 31<sup>st</sup> December 2005, even if he had received pre-revised pay of Rs.22400/- would now be placed in the revised pay of Rs.37400/- only in addition to the Grade Pay of Rs.10,000. Thus the illegality which has been committed in the present matter also relates to equating the pre-revised pay scale of Rs.18,400-22,400/- with the pre-revised pay scale of Rs.14,300-18,300/-.

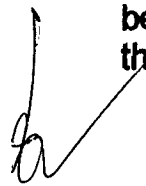
20. In order to buttress the aforesaid submission applicants have given specific instance of an officer in para-6 of the Additional Affidavit who retired at a higher pay on 31.12.2005 getting a much higher pension at that time than another officer who retired only 5 days later, i.e., on 5.1.2006 at a lower pay. After implementing the VI CPC recommendations, as illegally modified by the Department of Personnel, the result is that the concerned person who retired on 31.12.2005 is getting far lower pension than the person who retired 5 days later. A copy of the said chart amplifying the above position has also been reproduced, which is to the following effect:

Name	Ashok K. Ghosh	R.K. Goel
Department	Railways	Heavy Water Board
Scale of Pay	18400-500-22400	18400-500-22400
Date of Retirement	31.12.2005	05.01.2006 i.e. only 5 days
Last Pay Drawn	Rs.22900 (incl. one Stagnation increment)	Rs.21400
Average 10 months Emoluments incl. Dearness Pay	Rs.34350	Rs.31737.50 or 31738
Original Pension fixed	Rs.17175	Rs.15869
Revised Pension Fixed after 6 <sup>th</sup> CPC implementation	Rs.2587(i.e. $\frac{Rs.22900 \times 2.26}{2}$ )	Rs.29435

21. Applicants have also explained as to how the disparity has resulted on account of implementation/acceptance of VI CPC recommendations by the Government vide resolution dated 29.08.2008. As can be seen from the clarificatory order dated 30.08.2008 (Annexure A-6 at pages 139-147) regarding pay scale of S-24 to S-29, the pay scales of the V CPC of Rs.14300-18300 in respect of S-24 employees, the VI CPC has placed them in Pay Band-3 and recommended the Pay Band of Rs.15,600-39,100/- plus Grade Pay of Rs.7600 per month. However, the Government has upgraded the said S-24 category to Pay Band 4 and placed them in the pay Band of Rs.37,400-67,000/- plus Grade Pay of Rs.8700/- per month. It is, therefore, absolutely clear that the Government authorities have increased the pay of S-24 employees by far more than double. Further, it is very relevant to note that the said impact would be not only on the retired S-24 officers but also on the large base of serving employees. Similarly, the same is the position with regard to S-25, S-26 and S-27 all of whom were recommended by the Sixth Pay Commission to be in the pay band of Rs.15,600-39,100/- but were placed by the Government in the pay band of Rs.37,400-67,000/-. Similarly in the case of employees who were placed in S-29 pay scale they were recommended Pay Band of Rs.39,200-67,000/- plus Grade Pay of Rs.9,000/- per month by the VI CPC, whereas the Government has revised pay structure to Rs.37,400-67,000/- plus Grade Pay of Rs.10,000/- per month. This has resulted in the anomaly which is essentially to be rectified.

22. It is submitted that the applicants are in the category of retired employees and are a diminishing category. In contrast, the serving employees of S-29 category are being given the benefits of the recommendations of the VI CPC. Further, as explained earlier, the benefits available in S-24 to S-27 grade are available not only to retired employees but also to the large base of serving employees. The financial effect of the same is many-many times that of the small additional expenditure which will be incurred on account of the benefits sought by the Applicants. Therefore, the argument sought to be raised by the Union of India during the course of hearing regarding the so-called financial impact has no factual basis at all.

23. Thus, according to the applicants the aforesaid disparity, which has been caused on account of granting enhanced scales in S-24 to S-27 grade contrary to the recommendations of the VI CPC and further reducing the scales recommended by the Pay Commission in respect of S-29 grade to be at par with the employees who were placed in S-24 to S-27 grade is required to be set right. According to the learned counsel of applicants even if the cut off date of 1.1.2006 for revision of the pay scale and grant of pensionary benefits on the basis of VI CPC is to be upheld, even then the applicants are entitled to relief based upon the Resolution dated 29.08.2008 whereby the recommendations of the

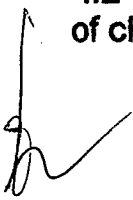




Pay Commission was accepted and on account of disparity, which has resulted in granting different pay scales, as recommended by the VI CPC, which has caused prejudice to the applicants and thus has to be set right.

24. The stand taken by the respondents is that the recommendations of the VI CPC, as accepted by the Government vide Resolution dated 29.08.2008 and further clarification issued by the respondents is in consonance with the recommendations so accepted. It is stated that there may be a slight change in the word used in the clarification issued by the Government subsequently but has the same meaning as in the latter part of para 5.1.47 of the report of the VI CPC as accepted by Government. The phrase "minimum of the pay in the Pay Band" has been used and this phrase carries the same meaning i.e., the pay from which a pay band starts. It is stated that the clarification on OM dated 3.10.2008 was issued after due exercise in Department of Pension and Pensioners Welfare and Ministry of Finance and with the approval of the Hon'ble Minister of State. It is further stated that VI CPC has not made any recommendation for complete parity between the pre-1996 and post-1-1-1996 pensioners. Therefore, question of allowing complete parity between pre-1996 and post 1.1.1996 pensioners would not arise. It is stated that the OM dated 1.9.2008 has been further clarified on 3.10.2008 that pension calculated at 50% of the minimum of the pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale.

25. In order to decide the matter in controversy, at this stage, it will be useful to extract the relevant portions of para 5.1.47 of the VI CPC recommendation, as accepted by the Resolution dated 29.08.2008, para 4.2 of the OM dated 1.9.2008 and subsequent changes made in the garb of clarification dated 3.10.2008, which thus read:



Resolution No.38/37/8-P&PW(A) dated 29.08.2008- Para 5.1.47 (page 154-155)	Para 4.2 of OM DOP&PW OM No. No.38/37/8-P&PW(A) dated 1.09.2008 (page 38 of OA)	OM DOP&PW OM No. No.38/37/8-P&PW(A) dated 3.10.2008
The fixation as per above will be subject to the provision "that the revised pension, in no case, shall be lower than <u>50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale form which the pensioner had retired.</u>	The fixation as per above will be subject to the provision "that the revised pension, in no case, shall be lower than <u>50% of the (sum of the) minimum of the pay in the pay band plus (and) the grade pay (thereon) corresponding to the prerevised pay scale from which the pensioner had retired.</u>	The Pension Calculated at 50% of the [sum of the] <u>minimum of the pay in the pay band [and the grade pay thereon corresponding to the pre-revised pay scale] plus grade pay</u> would be calculated (i) at the <u>minimum of the pay in the pay band (irrespective of the pre-revised scale of pay plus)</u> the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400-67000 and the corresponding grade pay being Rs.10000 p.m., his minimum guaranteed pension would be 50% of Rs.37400+Rs.10000 (i.e. Rs.23700)

	<b>Strike out are deletions and bold letter addition</b>	<b>Strike out are deletions and bold letters addition.</b>
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26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is clear that the revised pension of the pre-2006 retirees should not be less than 50% of the sum of the minimum of the pay in the Pay Band and the grade pay thereon corresponding to the pre-revised pay scale held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired has been given a go-by by deleting the words "sum of the" "and grade pay thereon corresponding to the pre-revised pay scale" and adding "irrespective of the pre-revised scale of pay plus" implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words "sum of the" "and grade pay thereon corresponding to the pre-revised scale" "and addition of the words "irrespective of the pre-revised scale of pay plus", as introduced by the respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet. Thus, such a course was not permissible for the functionary of the Government in the garb of clarification, that too, at their own level without referring the matter to the Cabinet.

27. We also wish to add that the Pay Commissions are concerned with the revision of the pre-revised 'pay scales' and also that in terms of Rule 34 of the CCS (Pension) Rules, 1972 the pension of retirees has to be fixed on the basis of the average emoluments drawn by them at the time of retirement. Thus, the pre-revised scale from which a person has retired and the emoluments which he was drawing at the time immediately preceding his retirement are a relevant consideration for the purpose of computing revised pension and cannot be ignored. As such, it was not permissible for the respondents to ignore the pre-revised scale of pay for the purpose of computing revised pension as per the modified parity in the garb of issuing the clarifications, thereby altering the modified parity/formula, which was accepted by the Central Government vide its resolution dated 29.08.2008.

28. The above view is also fortified by paras 137.15, 137.20 and 137.21 of the V CPC recommendations, as reproduced below, leading to

modified parity, which were also accepted by the VI CPC and accepted by the Central Government and thus read:

*"Immediate relief to pensioners"*

137.15 While the work relating to revision of pension of pre 1.1.1986 retirees by notional fixation of their pay shall have to be undertaken by the pension sanctioning authorities to be completed in a time-bound manner, we suggest that the pensioners should be provided some relief immediately on implementation of our recommendations. The pension disbursing authorities may be authorized to consolidate the pension by adding (a) basic pension; (b) personal pension, wherever admissible; (c) dearness relief as on 1.1.1996 on basic pension only; (d) Interim Relief (I and II) and (e) 20% of basic pension. The consolidated pension shall be not less than 50% of the minimum pay, as revised by the Fifth CPC, of the post held by the pensioner at the time of retirement. This may be stepped up by the pension disbursing authorities, wherever feasible, to the level of 50% of the minimum pay of the post held by the pensioner at the time of retirement. (emphasis supplied)


xxx      xxx      xxx      xxx      xxx

*Modified parity conceded*

137.20 We have given our careful consideration to the suggestions. While we do not find any merit in the suggestion to revise the pension of past retirees with reference to maximum pay of the post held at the time of retirement, as revised by the Fifth CPC, there is force in the argument that the revised pension should be not less than that admissible on the minimum pay of the post held by the retiree at the time of retirement, as revised by the Fifth CPC. We have no hesitation in conceding the argument advanced by pensioners that they should receive a pension at least based on the minimum pay of the post as revised by Fifth Pay Commission in the same way as an employee normally gets the minimum revised pay of the post he holds. We recommend acceptance of this principle, which is based on reasonable considerations. (emphasis supplied).

*Principle enunciated*

137.21 The Commission has decided to enunciate a principle for the future revision of pensions to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. This guiding principle which we have accepted would assure that past pensioners will obtain complete parity between the pre-'86 and post-'86 pensioners but there will be only a modified parity between the pre-'96 and post-'96 pensioners. The enunciation of the principle would imply that at the time of the next pay revision say, in the year 2006, complete parity should be given to past pensioners as between pre-1996 and post-1996 and modified parity be given between the pre-2006 and post-2006 pensioners." (emphasis supplied)



29. From the above extracted portion it is clear that the principle of modified parity, as recommended by the V CPC and accepted by the VI CPC and accepted by the Central Government provides that revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and grade pay corresponding to revised pay scale from which the pensioner had retired. According to us, as already stated above, in the garb of clarification, respondents interpreted minimum of pay in the pay band as minimum of the pay band. This interpretation is apparently erroneous, for the reasons:

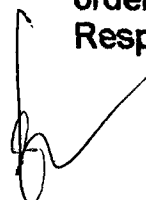
a) if the interpretation of the Government is accepted it would mean that pre-2006 retirees in S-29 grade retired in December, 2005 will get his pension fixed at Rs.23700/- and another officer who retired in January 2006 at the minimum of the pay will get his pension fixed at Rs.27350/-. This hits the very principle of the modified parity, which was never intended by the Pay Commission or by the Central Government;

b) The Central Government improved upon many pay scales recommended by the VI CPC. The pay scale in S-29 category was improved from Rs.39200-67000/- plus Grade Pay of Rs.9,000/- with minimum pay of Rs.43280/- to Rs.37,400-67000/- with grade pay of Rs.10,000/- with minimum pay of Rs.44,700/- (page 142 of the paper-book). If the interpretation of the Department of Pension is accepted, this will result in reduction of pension by Rs.4,00/- per month. The Central Government did not intend to reduce the pension of pre-2006 retirees while improving the pay scale of S-29 grade;

c) If the erroneous interpretation of the Department of Pension is accepted, it would mean that a Director level officer retiring after putting in merely 2 years of service in their pay band (S-24) would draw more pension than a S-29 grade officer retiring before 1.1.2006 and that no S-29 grade officer, whether existing or holding post in future will be fixed at minimum of the pay band, i.e., Rs.37,400/-. Therefore, fixation of pay at Rs.37,400/- by terming it as minimum of the pay in the pay band is erroneous and ill conceived; and

d) That even the Minister of State for Finance and Minister of State (PP) taking note of the resultant injustice done to the pre-11.2006 pensioners (pages 169-170) had sent formal proposal to the Department of Expenditure seeking rectification but the said proposal was turned down by the officer of the Department of Expenditure on the ground of financial implications. Once the Central Government has accepted the principle of modified parity, the benefit cannot be denied on the ground of financial constraints and cannot be said to be a valid reason.

30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees



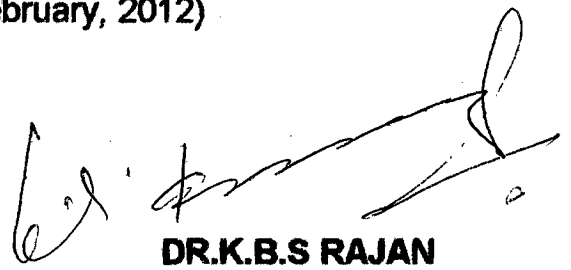
w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs."

9. As prayed for by the counsel, the above order of the Tribunal which is based on the Full Bench Judgment 655 of 2010 (and Connected O.As) applies fully to the facts of this Case. Hence, without any hesitation, the OA can be allowed on the very same lines.

10. Accordingly, this OA is allowed. It is declared that the applicants are entitled to 50% of the minimum of the pay in the pay band S-26 as per fitment formula at Annexure A-2. It is also declared that the applicants are entitled to pension on the basis of the recommendations made by the Government vide extracted above. Respondents are therefore, directed to reconsider Annexure A-11 and take into account the grievances raised in Annexure A-6. Respondents shall ensure that the fixation of pension takes place at the earliest and in any event not later than four months from the date of receipt of copy of this order.

11. Under the circumstances, there shall be no orders as to costs.

(Dated, this the 10<sup>th</sup> day of February, 2012)



**DR.K.B.S RAJAN**  
**JUDICIAL MEMBER**